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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

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5 LESLIE WHITELEY AND LEONARD

6 WHITELEY,

7 Plaintiffs,

8 vs. NO. 303184

9 RAYBESTOS-MANHATTAN, et al.,

10 Defendants.

11 Volume 3 Pages 289 to 533 /

12

13 VIDEOTAPED DEPOSITION OF

14 LESLIE WHITELEY

15 =====

16 THURSDAY, SEPTEMBER 16, 1999

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22 REPORTED BY: MARJORIE FORMAN, CSR #2783

23 Tooker & Antz

24 Court Reporting & Video Services

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San Francisco, California 94103

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00290

1 I N D E X

2 EXAMINATION BY: PAGE

3 MR. SCARVIE: 294

4 MR. BARRON: 311, 530

5 MS. SINGAL: 525

6 MS. CHABER: 527

7

8 E X H I B I T S

9

10 DEFENDANTS' DESCRIPTION PAGE

11 FOR IDENTIFICATION

12

B Photocopy of the cover of a book

13 entitled "a camel names joe,"

14 and the publication page.

297

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00291

1 BE IT REMEMBERED that on Thursday, September 16,

2 1999, at the hour of 9:48: a.m., at the Law Offices of

3 Wartnick, Chaber, Harowitz, Smith & Tigerman, 101

4 California Street, Suite 2200, San Francisco, California

5 94111, before me, Marjorie Forman, duly authorized to

6 administer oaths pursuant to Section 2093(b) of the
7 California Code of Civil Procedure, personally appeared,
8 LESLIE WHITELEY,
9 Called as a witness by the Plaintiffs, and the
10 Witness, having been duly previously sworn, was examined
11 and testified is as hereinafter set forth:
12 A P P E A R A N C E S
13 For the Plaintiffs:
14 Law Offices of Wartnick, Chaber, Harowitz, Smith & Tigerman
15 101 California Street, Suite 2200
16 San Francisco, California 94111
17 BY: MADELYN CHABER and ROBERT BROWN, Attorneys at Law
18 For the Defendants: Golden Gate Drywall, Inc.; D. W.
Nicholson Corporation.
19 Burnham & Brown, 1901 Harrison Street
11th Floor
20 Oakland, California 94604
BY: PETER LAGASSE, Attorney at Law
21 For the Defendant: CCR Defendants named, served &
Remaining in the Action.
Haight, Brown & Bonesteel
22 100 Bush Street, 27th Floor
San Francisco, California, 94104
23 BY: SANGEETA SINGAL, Attorney at Law
For the Defendant: Riley Stoker Corporation
McNamara, Houston, Dodge, McClure & Ney
24 1211 Newell Avenue, Suite 202
P.O. Box 5288
25 Walnut Creek, California 94596
BY: AMY K. KROLL. Attorney at Law
00292
1 For the Defendant: Westburne Supply.
2 Steefel, Levitt & Weiss
30th Floor, One Embarcadero Center
3 San Francisco, California 94111
BY: VLADISLAV LUSKIN, Attorney at Law
4 For the Defendant: Grinnell
5 Ropers, Majeski, Kohn & Bentley
333 Market Street, Suite 3150
6 San Francisco, California 94105
BY: ANDRIAN DRISCOLL, Attorney at Law
7 For the Defendants: Plant Insulation Company:
8 Kaiser Cement Corporation; Kaiser Gypsum Company.
Jackson & Wallace
9 580 California Street, 15th Floor
San Francisco, California 94104
10 BY: JAGJIT KAUR, Attorney at Law
11 For the Defendants: Sugden Engineering; Martin Madsen; SB
Decking.
12 Walsworth, Franklin, Bevins & McCall
550 Montgomery Street, 8th Floor
13 San Francisco, California 94111
BY: INGRID CAMPAGNE
14 For the Defendant: R. J. Reynolds Tobacco Company
15 Law Offices of Howard Rice Nemerovski Canady Falk & Rabkin
Three Embarcadero Center, Seventh Floor
16 San Francisco, California 94111
BY: THOMAS G. SCARVIE and MARC HABER, Attorneys at Law

17 For the Defendants: Bigelow-Liptak; A.P. Green;
18 Harbison-Walker; W.A. Call; J.T. Thorpe, Inc.; Syd
 Carpenter Marine:
19 Law Offices of Prindle, Decker & Amaro
 369 Pine Street, Suite 800
20 San Francisco, California 94104
 BY: JAMES PRICHASON, Attorney at Law
21
22 For the Defendant: Pierce Enterprises Company, dba Pierce
 Enterprises.
 Law Offices of Davidovitz & Bennett
23 Suite 750, One Embarcadero Center
 San Francisco, California 94111
24 BY: JAMES PRICHASON, Attorney at Law
25 For the Defendant: Philip Morris.
 Shook, Hardy & Bacon LLP

00293
1 One Market Street
 Steuart Tower, Ninth Floor
2 San Francisco, California 94105
 BY: GERALD V. BARRON, Attorney at Law and MORDECAI D.
3 BOONE, Attorney at Law
4 Also Present:
5 JUSTICE ROBERT L. DOSSEE, Two Embarcadero Center, Suite
 1100, San Francisco, California 94111
6
7 Tooker & Antz, Certified Court Reporters and Video Services
 818 Mission Street, Fifth Floor
 San Francisco, California
8 represented by DANIEL DeFRANK, VIDEOGRAPHER
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00294
1 VIDEO OPERATOR: Ladies and gentlemen, we are on
2 video record on September 16th, 1999. The time is 9:48.
3 This is the beginning of tape 1 of volume 3 in the case of
4 Leslie Whiteley versus Raybestos-Manhattan, et al., for the
5 deposition of Leslie Whiteley.
6 All aspects as indicated on tape 1, volume 1
7 remain the same.
8 Counsel, you may proceed.
9 EXAMINATION BY MR. SCARVIE
10 MR. SCARVIE: Thank you.
11 Q. Good morning.
12 A. Good morning.
13 Q. My name is Tom Scarvie, and I represent Reynolds
14 Tobacco Company. And the reason I am cutting in line here,

15 is counsel for Philip Morris said, is because your lawyer
16 has kindly allowed me to do this, because I have another
17 commitment this afternoon.

18 I want to ask you some questions about -- mainly
19 about the Camel ads that you -- you talked about yesterday,
20 and then a few other things, but not a whole lot.

21 And Mr. Barron will be asking a lot of the same
22 questions that I would ask you had I gone first, so you
23 don't have to worry about either one of us, I think,
24 repeating each other.

25 And again, the same admonitions are in place
00295

1 cautioning you to tell the truth. Okay?

2 A. (Nods head.)

3 Q. Yes? I want you to say "yes."

4 A. Yes.

5 Q. Okay. And if you don't understand something I
6 say, please make me repeat it so that you do. Okay?

7 A. Yes, I will.

8 Q. Okay. Great.

9 First of all, do you -- do you know anyone, or
10 have you ever spoken with anyone that you identify as being
11 from my client, Reynolds Tobacco Company?

12 A. What -- what do you mean by that?

13 Q. Well, I mean, on the telephone, a call from you
14 about a product, somebody calling you for some reason.

15 A. I -- I don't know.

16 Q. Okay. Is there anything that sticks in your mind
17 about any conversation that you may have had with a
18 Reynolds Tobacco Company employee?

19 A. No.

20 Q. Okay. Do you know as you sit there, what products
21 you smoked were manufactured by the Reynolds Tobacco
22 Company?

23 A. Camels.

24 Q. Okay. And do you know, are there any other
25 products that you smoked, for however long a time, that you
00296

1 identify as being manufactured by the Reynolds Tobacco
2 Company?

3 A. That's all I'm aware of.

4 Q. Okay. I'm going to ask you in a minute about
5 another brand, but I do want to go quickly, if we can, to
6 those Camel ads that you talked to us about yesterday.

7 A. Yes.

8 Q. Okay. And let me ask you a few questions about
9 those and just to sort of establish where they came from
10 and whatnot.

11 I know you talked about this some yesterday, but I
12 believe what you said is that your attorneys gave you this
13 book I got, that's called a Camel called Joe?

14 A. Yes, I looked at that.

15 Q. Okay. And it was out of this book that you picked
16 certain things that you felt that you recognized, is that
17 true?

18 A. Yes.

19 MR. SCARVIE: Okay. I want to mark this as
20 Defendants' 1, but I don't want to put the whole book in.
21 I just want to put it in for some kind of identification,
22 B. And let me just -- I'll just read maybe the title page
23 so we know what it is that we are talking about.

24 MS. CHABER: I guess I am confused. What do you
25 mean, you are putting it in. You just want a face sheet?

00297

1 MR. SCARVIE: Yeah. Just a face sheet.

2 MS. CHABER: Just a photocopy of the face sheet?

3 MR. SCARVIE: Yeah. For now, that will be great,

4 and I'll provide that to you at the appropriate time, but
5 Defendants' B -- and for identification it's a book called
6 "a Camel named Joe, an illustrated story of an American pop
7 icon by David DeSmith, D-E cap S-M-I-T-H.

8 Q. And that's the book you looked at that I am
9 showing you now, is that right?

10 A. Yes.

11 Q. Okay.

12 (Whereupon, Defendants' Exhibit No. B
13 was marked for identification.)

14 MR. SCARVIE: Q. Okay. Did you make any effort,

15 ma'am, to find ads that were -- that -- that were for
16 Reynolds products other than looking in this book that your
17 lawyers gave you called "a Camel called Joe"?

18 A. No.

19 Q. In other words, what I am wondering is, have you
20 in the past, collected ads from magazines or from
21 newspapers or videotapes of -- of television advertising?

22 A. I have not collected -- the only thing that I have
23 kept is the mailers --

24 Q. Okay.

25 A. -- that come in the mail, and they have -- she's

00298

1 produced them, I believe.

2 Q. Okay. Whatever you've got, you've produced to us
3 today, as far as mailers or advertising?

4 A. Except one, I think that came day before yesterday
5 in the mail.

6 Q. Do you know who that was from?

7 A. I think Camel.

8 Q. Okay. And do you know -- do you know what the
9 nature of it was or --

10 A. No. My husband does not open them.

11 Q. Just tosses them or keeps them?

12 A. No. He puts them aside.

13 Q. All right. So you have at least one other item at
14 home now that is what you believe to be a mailer from Camel
15 cigarettes?

16 A. Yes.

17 Q. Okay. And I would ask you, if you wouldn't mind,
18 to give that to your attorney so that she can turn that
19 over to us so --

20 A. Yes.

21 Q. -- we can see what that is. Any problem with
22 that?

23 A. No.

24 Q. All right. Great.

25 A. I have no need for it.

00299

1 Q. Okay. So -- so I'm clear on this, and the -- the
2 items -- all of the items in the packet that's been marked
3 as Plaintiffs' Exhibit 5 are, I guess reproductions of
4 things that you picked out of the book, "a Camel called
5 Joe," right?

6 A. Right.

7 Q. Okay. And I take it that you don't know whether
8 any of those things were actually ads that you saw over the
9 years for Camel, is that right?

10 A. They look familiar.

11 Q. Okay. But my point is, they could be things that
12 you saw from some of the mailers, they could be things that
13 you saw in some of the catalogs or -- or whatever, is that
14 right?

15 A. Yeah. Yeah. Yes.

16 Q. All right. And is it true that the reason that we
17 know that is because only a few of them have a warning on
18 them, right?

19 A. I -- I don't know what --

20 Q. Do you know when the Federal government decreed
21 that there be no more cigarette advertising in newspapers
22 and magazines?

23 A. No I don't.

24 MS. CHABER: I suspect you weren't finished with
25 your sentence, otherwise I am going to object that your
00300

1 question lacks foundation.

2 MR. SCARVIE: Okay. Well, I mean, if she knows
3 she knows; but if she doesn't, she doesn't.

4 MS. CHABER: Well --

5 MR. SCARVIE: Let me just ask a direct question.

6 Q. Are you aware that in the -- in the early '70s,
7 the -- there was no longer any cigarette advertising in
8 books and magazines?

9 A. No.

10 Q. And similarly, are you aware that --

11 MS. CHABER: Again, I would object, that that
12 assumes facts not in evidence and that lacks foundation,
13 that there's no advertising in magazines after 1970.

14 MR. SCARVIE: Okay.

15 Q. Well, are you aware that at some point, ma'am,
16 it -- it became -- the Federal government said that
17 cigarette companies could no longer advertise in books and
18 magazines?

19 A. No.

20 MS. CHABER: Again, lacks foundation, assumes
21 facts not in evidence.

22 JUSTICE DOSSE: Sustained. As to the form of the
23 question, I'd sustain.

24 MR. SCARVIE: Q. Are you aware, ma'am, that at
25 some time the Federal government said that the cigarette
00301

1 companies could no longer advertise on radio and TVs?

2 A. On TV.

3 Q. Okay. And you are aware of that --

4 A. Well, because they quit showing cigarette ads.

5 Q. Yes, ma'am. Do you know approximately when that
6 was?

7 A. No.

8 Q. But in any event, what you've shown us in Exhibit
9 5 are things that you recognize, but you can't tell us that
10 these are advertisements that you saw for Camel cigarettes.
11 Is that a fair statement?

12 A. I recognize them. I thought through -- what came
13 through the mail to me, mostly, is -- is what I saw.

14 Q. Okay. And --

15 A. And billboards.

16 Q. I understand. And -- but you chose these, again,
17 out of a book that was given to you by the -- by the -- by
18 your lawyer?

19 A. Yes.

20 Q. Okay. Now, could you leaf through those and ask
21 me -- and tell me if you see anything in them that you

22 interpret as being any sort of a health claim on the part
23 of tobacco companies.

24 A. On the part of the tobacco companies?

25 Q. Yes, ma'am.

00302

1 A. With health?

2 Q. Yes.

3 A. I see -- what do you mean by "health"?

4 Q. That any -- anything in any of those ads that --

5 that you think is the tobacco company saying that the
6 cigarettes are a healthy thing for you to smoke.

7 A. She looks pretty healthy.

8 Q. Well, all right. That's 5-B right?

9 A. Yes. And he looks pretty happy.

10 Q. Okay.

11 A. So I guess if you are happy and healthy, yes.

12 Q. But there's nothing in any of the words that you
13 see in this packet of 5 that says anything about health, is
14 there?

15 A. "Smooth" and gives you character. I -- I wish I
16 looked at healthy as she does.

17 Q. Well, what is there about those words "smooth
18 character," that you think is some sort of a health claim?

19 A. A what?

20 Q. A health claim.

21 A. Oh, I didn't say it was a --

22 Q. Okay. That's a description of -- of Joe Camel, is
23 it not?

24 A. Yes.

25 Q. All right.

00303

1 A. And the "75 years and still smoking." If I was --
2 MS. CHABER: It's on A, I believe, your Honor.

3 MR. SCARVIE: Q. This is Exhibit 5-A?

4 A. Yes. I can't imagine smoking for 75 years.

5 Q. Okay. So you think that the words "Camel 75 years
6 and still smoking," you interpret that as being some sort
7 of a health claim?

8 A. I would say so. Doesn't it --

9 Q. All right. Right above that, ma'am, is a -- a big
10 black box and it says "Surgeon General's warning:
11 Cigarette smoke contains carbon monoxide."

12 A. Uh-huh.

13 Q. Would you take that as a warning about health
14 aspects of cigarettes, would you not?

15 A. Now I would because I know what cigarette smoking
16 does to me. Okay?

17 Q. And when you saw that -- when you saw that,
18 though, you understood -- as Mr. Barron established
19 yesterday, you understood what all those words were?

20 A. Actually, what I understood is carbon monoxide is
21 car exhaust. And why would car exhaust be in cigarettes?

22 Q. Right.

23 A. That tells me nothing.

24 Q. It tells you --

25 A. It tells me why --

00304

1 Q. Doesn't it make you --

2 MS. CHABER: Wait. Wait, Counsel. Let her
3 finish, please.

4 MR. SCARVIE: I'm sorry.

5 MS. CHABER: Don't argue.

6 MR. SCARVIE: I apologize.

7 THE WITNESS: Why -- why would you be telling me
8 there's car exhaust in cigarettes? Why would you sell a
9 product with car exhaust in it? This is what I think.
10

10 MR. SCARVIE: Q. Okay. Didn't that make you
11 want to find out more about what that warning was all
12 about?

13 A. I don't recall reading this --

14 Q. You never --

15 A. -- until --

16 Q. You never read it before today?

17 A. Well, not today.

18 Q. But this week?

19 A. Well, I can't tell you if I recall seeing this,
20 you know, or when I -- I can't recall a specific time that
21 I read that specific sentence on anything.

22 Q. Okay. Can you find any other statements in the
23 packet that are in front of you that you take to be some
24 sort of a health claim?

25 A. A health claim?

00305

1 Q. Yes, ma'am.

2 A. Only that these guys are partying, and smoking
3 cigarettes seems to be part of it, and they are having a
4 good time.

5 Q. Anything else?

6 MS. CHABER: He doesn't just mean the one on top.

7 MR. SCARVIE: Q. No, no. I mean the whole
8 packet.

9 A. Oh, the whole thing?

10 Q. Yeah. Take your time, if you need to. I know
11 you've seen those several times now, but ...

12 A. Do you want me to tell you what makes them
13 healthy, is this --

14 Q. No. Just if you -- if you see anything in them
15 that you take to be a health claim of any kind, that's what
16 I want to know.

17 A. I -- I don't -- helps you relax. This guy is
18 relaxed. That's 5-I.

19 Q. Okay. Anything else?

20 A. I haven't read all this small print.

21 MS. CHABER: That's okay. Do you have trouble
22 reading? It's too small.

23 THE WITNESS: It's way to small.

24 MR. SCARVIE: Q. Okay.

25 A. I --

00306

1 MS. CHABER: I can't see.

2 THE WITNESS: Oh, I'm sorry.

3 MS. CHABER: That's okay.

4 THE WITNESS: I see no health claims.

5 MR. SCARVIE: Q. Okay. Would you take a look at
6 the one that I've pulled out here, it's 5-X, it's toward
7 the end, it's this Camel cash.

8 A. Okay.

9 Q. Now, you recognize that, right?

10 A. As Camel cash, yes.

11 Q. Yes, ma'am. And you have seen this Joe Camel with
12 a wig looking like one of the Founding Fathers before,
13 right?

14 A. Yes.

15 Q. You guys used the Camel cash to get products which
16 you told us about yesterday, right?

17 A. Yes.

18 Q. You collected the Camel cash for products?
19 A. Yes.
20 Q. Okay. And I take it that from time to time you --
21 you saw exhibits like 5-X, which is a -- I guess a
22 promotion for Camel cash, right?

23 A. That is Camel cash.
24 Q. And he's holding Camel cash, right?
25 A. Yes.

00307

1 Q. Okay. And you've seen this before?
2 A. Well, I -- I picked this because of the Camel
3 cash. I --
4 Q. Okay.
5 MS. CHABER: She's pointing to --
6 THE WITNESS: The Camel cash.
7 MS. CHABER: -- the small.
8 MR. SCARVIE: Q. Yes, ma'am.
9 MS. CHABER: -- objects.
10 MR. SCARVIE: I see that.
11 Q. You see on this promotional literature, though,
12 don't you, a big white box there that says "Surgeon
13 General's warning: Quitting smoking now" -- I'm sorry.
14 "Quitting smoking now greatly reduces serious risks to your
15 health." Do you see that?

16 A. I see it now that you pointed it out.
17 Q. And you have seen that before, haven't you?
18 A. I can't honestly say that noticed it.
19 Q. You never noticed it before?
20 A. No.
21 Q. Okay. That's a warning that there might be
22 something in cigarettes that you ought to be concerned
23 about, isn't there? I mean, you understand what that is?
24 A. Now I do, yes.
25 Q. Okay.

00308

1 A. If -- if they are so bad, why were they made
2 available for me to buy?
3 Q. Well, ma'am, but if you had noticed this warning
4 in the past, you would have understood it, would you not?
5 A. The -- to me, the government put those labels
6 there. I have no idea whether they were true or not.
7 Q. I understand. You told us that yesterday.
8 A. Yes. And I'm telling you now the same thing.
9 Q. But you understood the words, you understand the
10 words? Yes?
11 A. Understand the words, but maybe not what it did to
12 my body.

13 Q. Okay. All I am getting at is, if you had noticed
14 that before, that would have been something that would have
15 made you wonder and investigate, and maybe ask your doctor
16 about whether cigarette smoking was a good thing for you to
17 do, isn't that right?

18 A. But I told you, I did not notice it there.
19 Q. Never noticed it until 1998, is that your
20 testimony?
21 A. Until you just pointed this out right here now, I
22 just saw this.
23 Q. All right. So if I'm getting this --
24 A. I did not --
25 Q. I'm getting this clear, it's on every pack of

00309
1 cigarettes you smoked, it's on the promotional literature
2 that you got for Camel cash, it's on the cartons, it's on

3 all of the -- the radio, newspaper advertising, but you
4 never noticed it, is that your testimony?

5 A. No. I am saying I can't tell you specifically
6 what I read and didn't read, because I can't specifically
7 remember actually reading a pack of cigarettes or when or
8 where. And even so, I -- I didn't believe. You -- you
9 guys said that these were safe.

10 Q. Okay.

11 A. You make them.

12 Q. You've mentioned that before, and I'm sure Mr.
13 Barron will get into that more when he interrogates you;
14 but what's the source of your information that, as you've
15 put it, "you guys" represented that they were safe?

16 A. I don't -- I don't know.

17 Q. You don't know where you heard that?

18 A. No. I haven't --

19 Q. You just know that from somewhere?

20 A. Yes.

21 Q. You can't remember any radio or TV show or --

22 or --

23 A. Just.

24 Q. -- book or news magazine, or any news report, or
25 anything like that, that where you ever got this

00310

1 information, you just got it from somewhere, is that right?

2 A. Just specifically what we spoke of yesterday, of
3 the -- the vote on the news clip I saw on the tobacco
4 companies voting, no.

5 Q. I understand.

6 A. That is all I can --

7 Q. Yeah. Thanks -- thanks for that. Okay.

8 A. Other than that, I can't specifically tell you. I
9 just --

10 Q. Okay. I appreciate that. Did you ever -- did you
11 ever smoke a brand of cigarettes called More, More
12 cigarettes?

13 A. I have.

14 Q. When did you do that?

15 A. I'm not really sure.

16 Q. Would it have been in the '90s, or do you know?

17 A. I'm -- I'm not sure.

18 Q. Okay. Do you --

19 A. It wasn't much.

20 Q. A small amount?

21 A. Yes.

22 Q. And do you recall why you tried More cigarettes?

23 A. Because they were long.

24 Q. Okay. Any other reason why you tried More
25 cigarettes?

00311

1 A. Not that I know of.

2 Q. And what was it about the fact that they were long
3 that -- that appealed to you?

4 A. Smoked more.

5 Q. Okay. Any other attribute of More cigarettes that
6 attracted you to them for a period of time?

7 A. Not that I recall.

8 Q. And why did you not continue on with that brand?

9 A. I liked my Camels.

10 Q. All right.

11 MR. SCARVIE: Thank you very much. I appreciate
12 you letting me take you out of order.

13 THE WITNESS: You are welcome.

14 MR. BARRON: Can we go off the record just a
15 minute, allow me to slide over and get my things in front
16 of me?

17 VIDEO OPERATOR: Going off the record. The time
18 is 10:10.

19 (Discussion off the Record.)

20 VIDEO OPERATOR: We are back on the record. The
21 time is 10:12.

22 EXAMINATION BY MR. BARRON

23 MR. BARRON: Q. Good morning again.

24 A. Good morning.

25 Q. Are you feeling well enough to proceed this

00312

1 morning --

2 A. Yes.

3 Q. -- some time?

4 A. Yes.

5 Q. And as always, but I just want to remind you that
6 if at any point you need a break during which you'd like to
7 rest and then come back for further testimony, just
8 indicate that at any time. And if for any reason you feel
9 you may not be able to give your best and most accurate
10 testimony today, just tell us that and we'll stop for the
11 day and come back when we all can. Okay?

12 A. Yes.

13 Q. I would like to ask you some questions dealing and
14 concerning that period in your life before you first tried
15 smoking a cigarette at age 13 with that girlfriend.

16 By the way, who was that girlfriend?

17 A. Gloria Canales.

18 Q. And how do you spell her last name?

19 A. C-A-N-A-L-E-S, I suppose.

20 Q. Had you gone to elementary school with her?

21 A. Yes.

22 Q. Had you been friends with Gloria in elementary
23 school?

24 A. She lived next door. Yes.

25 Q. For how long had you been friends with Gloria

00313

1 before she got you to try your first cigarette?

2 A. I -- I don't know. Three years. That's a guess.

3 We are talking a long time ago, you are asking for --

4 Q. I'm asking for your best recollection.

5 A. Yes.

6 Q. It's kind of funny, though, people's recollection
7 works different ways. Mine is better for some kids I grew
8 up with in elementary school than it is for some people I
9 went to college with or law school, for example, because
10 you spend more time with them, or there's something about
11 the memory that makes it work that way.

12 So I don't know how yours works until I ask you,
13 and I just wanted you to give me your best estimate or best
14 recollection. Okay?

15 A. Yes.

16 Q. And did she continue on with you in school through
17 junior high?

18 A. I believe so.

19 Q. And how about into high school; did she go to the
20 same high school?

21 A. No.

22 Q. Did you remain friends with her at all after you
23 entered the new high school out in Ojai?

24 A. Yes.

25 Q. Is she still a friend?

00314

1 A. I haven't seen her in -- since I worked at Motel 6
2 in Ventura, and I don't know when that was. It was a long
3 time ago.

4 Q. Do you have any idea whether Gloria is still in
5 the Ventura area or not?

6 A. Last I heard, I think she lived in the state of
7 New York, and that was just hearsay.

8 Q. When you last heard of her, was she using her same
9 name or had she married or taken a different name?

10 A. I don't know what name she was using.

11 Q. What were her parents' names, if you remember?

12 A. Mary and Frank Canales.

13 Q. And you said she lived next to you for awhile.
14 Was that on the same street?

15 A. Yes.

16 Q. And that was the street that you lived on for many
17 years from the time you were born up until the time that
18 you folks moved to on how, is that right?

19 A. Correct. Entrada.

20 Q. In any event, again, what I wanted to ask you
21 about was that time that you and Gloria Canales smoked what
22 was for you, your first cigarette.

23 You had five siblings as part of your family at
24 that time, isn't that right?

25 A. Yes.

00315

1 Q. You had one younger brother, David, who was about
2 four years younger, correct?

3 A. Yes.

4 Q. You had a brother, Ken, or Kenneth, who was about
5 two years older?

6 A. Yes.

7 Q. You had Rebecca, as you call her Becky, who was
8 about six years older?

9 A. Yes.

10 Q. And you had a brother, Michael, who was about 13
11 years older.

12 A. I -- I guess.

13 Q. Okay. I don't want you to guess.

14 A. Well, I don't know how old he -- how much older he
15 was at the time, is what I meant. I'm sorry.

16 Q. He's --

17 A. I guess he was 13 years older. Is that better?

18 Q. He's still alive?

19 A. As far as I know.

20 Q. And he would be 13 years older than you today
21 because he was born in August of 1947. Does that make
22 sense, or does that sound about right?

23 A. Yes.

24 Q. Okay. By the time that you tried, at the
25 suggestion of Gloria, this smoking for the first time, by

00316

1 that time did you have one or more of those brothers or
2 sisters whom you liked and trusted?

3 A. They were my siblings. I don't know what you mean
4 by that. I loved them all. They were my brothers and
5 sisters.

6 Q. Were there any that you felt would tell you the
7 truth if you had an important question to ask about a
8 subject that you would rather discuss with them than, say,
9 your parents or a friend?

10 A. I couldn't say. I couldn't tell you what my frame
11 of mind was then. I don't remember that.

12 Q. You don't remember whether you thought of your
13 relationship with your brothers and sisters in that regard
14 when you were 13?

15 A. I -- I don't know what you are trying to get at.

16 Q. Well, let me give you an example. Sometimes I
17 know a younger sister can look upon an older sister, and
18 not get along with the older sister, think the older sister
19 is -- to use what kids sometimes use, a phrase -- a jerk
20 and not want to talk to them, and not trust them, and not
21 go to them with anything.

22 On the other hand, some sisters have relationships
23 where younger sisters look up to the older sister and think
24 they are pretty neat, sometimes want to be like them, at
25 least in certain ways, and certainly would feel comfortable

00317

1 going to them and ask them a question, such as, jeez, older
2 sister, is it a good idea if I do this, or do you know
3 anything about this.

4 And I just don't know what kind of relationship
5 you had with any of your brothers or sisters when you were
6 13, and that's what I -- that's what I am trying to find
7 out.

8 A. It was -- it was pretty good relationships.

9 Q. Okay.

10 A. If that's what you want to find out, yes, we were
11 a close family.

12 Q. And so if you wanted to find out something that
13 could be important to you, for example, important to
14 whether you were going to stay healthy or alive, you would
15 feel that you could have gone to them and said gee, do you
16 think it's a good idea that I do this, or do you think it's
17 a bad idea; and if so, why?

18 MS. CHABER: Compound and vague, ambiguous.

19 JUSTICE DOSSE: Overruled.

20 Do you understand the question?

21 THE WITNESS: My understanding is I have brothers
22 and sisters that I can talk freely to. I mean -- but I
23 don't know the point you want me to bring out, because I --
24 about what? I -- I can't -- a specific incident?

25 MR. BARRON: Q. Well --

00318

1 A. I obviously didn't ask anybody anything.

2 Q. Well, just take a most extreme example. Supposing
3 you had some friend in the neighborhood who also was a
4 friend in school, and that friend had, say, other friends
5 and you were tending to -- to use what kids say "hang
6 around" that group, and this person came to you at age 13
7 and said gee, you know, I want you to take this needle and
8 shoot this into your arm, and it's heroin.

9 What I am asking, for example, is would that be
10 the kind of thing that you would have felt comfortable
11 going to one of your brothers and sisters and saying, if
12 you didn't know, jeez is that a good idea? Why is this kid
13 asking me to do this? And have a discussion, or ask your
14 brother or sister questions about it?

15 MS. CHABER: Calls for speculation.

16 JUSTICE DOSSE: Sustained.

17 MR. BARRON: Q. Do you have an opinion as to,
18 when you were 13, whether you felt that you had such a
19 relationship with any of your brothers and sisters that you
20 could have gone to one of them, or more than one of them if

21 you didn't understand the potential health risks or dangers
22 or consequences of an activity, and you wanted to find out
23 what they thought about it, whether it was safe or not?
24 A. I don't know about that particular subject, but
25 I'm sure that if I wanted to, I could ask anybody any

00319
1 question, not just my brothers or sisters.

2 Q. And --

3 A. This is -- seems to me a silly question, because
4 anybody can ask questions of anyone --

5 Q. Sure.

6 A. -- of anything.

7 Q. Sure.

8 A. And I -- I don't -- I don't understand where you
9 are coming from on this.

10 Q. Okay. Anybody can. But sometimes people feel
11 that they don't feel comfortable, because of the lack of a
12 relationship with the person, or because they have a bad
13 relationship with the person.

14 So I am trying to find out whether you felt
15 comfortable with your brothers and sisters, whereby you
16 would feel that you could go to them if you had a question
17 like that, meaning involving a question of whether
18 something was a good idea for you or might have some risks
19 to your health.

20 A. I -- I don't know why I couldn't ask them any
21 questions, but I couldn't tell you that I would go to them
22 to ask anything specific.

23 Q. What about your parents, would your answer be the
24 same for them?

25 A. Yes.

00320

1 Q. Did you have any other people that you felt
2 comfortable with? For example, your attorney asked you
3 whether at times you went to church. Before you were 13
4 years old, at times did you go to church?

5 A. Yes.

6 Q. What church was that?

7 A. It was St. Paul's.

8 Q. Where was it located?

9 A. Ventura.

10 Q. And how regularly did you attend until you were
11 age 13?

12 A. When I was young, every Sunday.

13 Q. Was there a time when you stopped going while you
14 were still young?

15 A. Well, we would ditch and go out in the car and
16 read the funnies.

17 Q. By the time you were 13, what was your
18 relationship to the church and any person who was available
19 as a church person for people who noticed he had to have
20 some advice or help?

21 A. My relationship is a personal relationship with
22 God.

23 Q. Did you know anybody associated with St. Paul's
24 that you felt comfortable going to if you had a question
25 that you wanted to have answered that involved whether

00321

1 something might be a good idea or a bad idea for you to
2 engage in?

3 A. No.

4 Q. Did you like elementary school?

5 A. I suppose so.

6 Q. Did you get along with your teachers most of the
7 time or not?

8 A. Yes.

9 Q. Did you like your teachers most of the time or
10 not?

11 A. I liked them.

12 Q. Were there any there that seemed to be the kind of
13 people who would give honest, straightforward answers if
14 people asked them a question?

15 A. I -- I don't know. I didn't have personal
16 relationships with my teachers.

17 Q. No. I'm not saying "personal relationships." At
18 times in elementary school, didn't kids raise your hands
19 with questions and get answers from teachers?

20 A. Questions on what? That's school. I --

21 Q. That's right. That's right.

22 A. I suppose.

23 Q. Okay. And didn't some of those questions involve
24 things about science?

25 A. I don't know. I don't recall specific things that
00322

were asked.

1 Q. You never learned anything at all about biology or
2 science or health when you were in elementary school?

3 A. Vaguely do I remember much on health. The food
4 groups is what they mostly taught us, how to eat correctly.

5 Q. What kinds of food were good to eat because they
6 would promote health?

7 A. Meat.

8 Q. That's the kind of thing they taught?

9 A. Yes.

10 Q. Okay. Was the teacher or teachers who taught
11 that, people that you felt were trying to give honest
12 answers?

13 A. I don't know. Those -- that's what the school
14 hired. I can't tell you that. I was just a -- a kid I had
15 to go to school.

16 Q. But kids are --

17 A. I wasn't --

18 Q. But kids -- sometimes they don't give them enough
19 credit. Kids can have impressions about whether teachers
20 are good teachers or bad teachers, whether they are
21 interested or not interested, whether they are generally
22 people who are giving good answers or people who don't know
23 what they are talking about.

24 25 MS. CHABER: There's no question.
00323

1 MR. BARRON: So let me finish the question.

2 Q. Did you not ever have any impressions about any of
3 your teachers like the ones I just indicated to you?

4 A. Not that really stands out, not -- I mean, there
5 was teachers that I would rather have because they were
6 nice, and other ones who were strict, you know, but that --
7 other than that, teachers are teachers.

8 Q. Did you have any friends, up until the time you
9 tried smoking at the suggestion of Gloria, who did not
10 smoke?

11 A. Yes, I did.

12 Q. In fact, did most of your friends not smoke at the
13 time that Gloria got you to smoke?

14 A. I can't honestly say which ones had tried smoking
15 or not at that point.

16 Q. Would you tell me, please, at least which ones you

17 knew had tried smoking by that time?
18 A. Not for certain, no, I couldn't.
19 Q. Can you identify any of your friends that you knew
20 had already smoked before Gloria first suggested that you
21 do that that day?
22 A. Honestly, no, I couldn't.
23 Q. Had any of your brothers or sisters suggested that
24 you smoke before Gloria did?
25 A. Not that I'm aware of.

00324

1 Q. Did any other people that you knew of whatever
2 age, ever try to get you to smoke, or suggest that you
3 smoke before Gloria did?
4 A. What -- people? Nobody ever told me to smoke.
5 Q. So the first person that ever tried to get you to
6 smoke, or suggested that you do so, was Gloria on that day
7 that she did?
8 A. I guess. I -- I'm sorry. I -- yes.
9 Q. Was there a -- an older person that you knew
10 personally that smoked that you had looked particularly up
11 to up to this point?
12 A. Whether do you mean, "looked particularly up to"?
13 I had a grandmother who smoked and I loved her.
14 Q. Okay. Anybody else?
15 A. My mom's brothers and sisters all smoked. I -- I
16 loved them.
17 Q. Okay. Anybody else?
18 A. Whatever relatives there were that smoked, I --
19 Q. Was the fact this your mother's brothers and
20 sisters smoked, in your view, an inducement for you to
21 decide to accept Gloria's suggestion that you smoke?
22 MS. CHABER: Calls for speculation; vague and
23 ambiguous as to "inducement."
24 JUSTICE DOSSE: Overruled.
25 You can answer the question.

00325

1 THE WITNESS: I don't know.
2 MR. BARRON: Q. Was the fact that your
3 grandmother smoked and had a cough that you had noticed, an
4 incentive or inducement for you to accept Gloria's
5 suggestion that you smoked when she made that suggestion to
6 you for the first time?
7 A. I don't recall my grandmother having a cough at
8 that time.
9 Q. All right. Was the fact that your grandmother
10 smoked, in your opinion, an inducement or incentive for you
11 to accept Gloria's suggestion when you did, that you start
12 smoking when she approached you the first time about it?
13 A. I don't think anyone had anything to do with it
14 because it was just me and Gloria there. So any other
15 person is -- if you ask me is -- wasn't there, wasn't
16 involved.
17 Q. Before you accepted Gloria's suggestion, had you
18 ever purchased candy cigarettes in the past?
19 A. Most likely, yes, when I was young.
20 Q. When you say "most likely," do you actually --
21 A. Well, I remember having the -- the -- they were
22 gum cigarettes and the ones that blow smoke.
23 The actual act of purchasing those, I don't
24 remember.
25 Q. How frequently did you use or consume candy

00326

1 cigarettes or gum cigarettes, from wherever source before

2 you were 13 and smoked with Gloria?
3 A. I don't know.
4 Q. Was it something you frequently did?
5 A. I just remember that was part of my childhood was
6 part -- part of the -- the candy that we had to eat was
7 the -- the cigarette candy.
8 Q. You don't mean to indicate that's the only candy
9 you ever ate as a child?
10 A. No. I said part of -- that was part of the candy
11 that we had. It was part of the selection for children,
12 and we did select to buy them, obviously, since I've had
13 them before.

14 Q. How frequently did you have them?
15 A. I don't know.
16 Q. Can you give me your best estimate?
17 A. No. Honestly, no, I couldn't.
18 Q. Do you have any idea whether it was a couple or
19 three times, or whether it was more than that?
20 A. No, I couldn't honestly answer that. It's like
21 saying, how many M&Ms have you ate? I don't know.
22 Q. By the time that Gloria got you to smoke for the
23 first time, what was your favorite TV commercial or
24 commercials that had cigarettes or smoking as their theme
25 or as what they were advertising?

00327

1 A. I don't know.
2 Q. What was your favorite advertisement or
3 advertisements that you had seen in print, either on a
4 billboard or in the newspaper or in a magazine?
5 A. I don't know.
6 Q. What was your favorite commercial on the radio by
7 that time?
8 A. I don't know.
9 Q. Before Gloria got you to smoke for the first time,
10 had you been kind of hoping and thinking about the
11 opportunity to smoke?
12 A. That, I don't recall thinking of anything, the
13 sort.
14 Q. Had you, before Gloria came to you, felt that you
15 better hurry up and smoke in order to become an adult or in
16 order to be accepted by anybody or any group of people?
17 A. I don't recall my thoughts at that time. That's a
18 long time ago you are asking me to recall personal
19 thoughts, and I don't know what I was thinking at the time.
20 I was teenager.
21 Q. Okay. That's true. And I am doing that. And if
22 you don't remember that's fine.

23 But to give you another example, it is said -- and
24 some of us have experienced the fact that they can always
25 remember the first kiss. They also can probably remember

00328

1 whether they wanted to have a kiss or be kissed before it
2 happened, even though they are young and even though it was
3 a long time ago.
4 So what I am trying to find out from you is,
5 before Gloria came to you and got you to smoke this first
6 cigarette, were you sort of sitting around kind of thinking
7 about how nice it would be if you could only smoke like an
8 adult, or only be accepted by a group of people who were
9 smoking that you looked up to, or anything like that?
10 A. Not that I remember.
11 Q. Were you trying to model yourself after any
12 particular well-known celebrity, or if not well-known, some

13 particular model when you decided that you would accept
14 Gloria's suggestion that you start smoking?

15 A. No.

16 Q. Did you only smoke one cigarette with Gloria that
17 first time that she got you to smoke?

18 A. Yes. That day, yes.

19 Q. All right. Did you smoke another cigarette soon
20 thereafter, or did you wait for some more substantial
21 period of time?

22 A. I don't remember.

23 Q. Do you remember where you got the first cigarette
24 that you smoked after the one with Gloria?

25 A. No.

00329

1 Q. Do you remember whether it was provided by someone
2 else or whether you were the one that got it?

3 A. No. I don't remember where the source was.

4 Q. By the time that you and Gloria smoked, which was
5 for you the first time, had you tried alcohol?

6 A. I don't know. I don't remember if I had had a sip
7 of beer, or what. I don't know.

8 Q. By that time, had you had any alcohol that was not
9 with the knowledge and permission of your parents?

10 A. I don't know.

11 Q. You can't remember, one way or another?

12 A. I don't think I did. I don't -- I'm telling you I
13 don't remember. I don't think I did. I was 13.

14 Q. Again, I'm only able to get from you what you
15 remember, and I don't want you to try to force a memory
16 that's not there.

17 Sometimes, though, when we think about things and
18 take a moment, memories return. For example, some people
19 do remember when they first drank alcohol that was not with
20 their parents' permission.

21 A. I was not 13, no.

22 Q. How old were you?

23 A. One incident that I remember, I believe I was
24 probably 14, and this made me very sick, it cured me at
25 that point, and my parents knew about it.

00330

1 Q. After you had done it?

2 A. Yes.

3 Q. Not before?

4 A. No. The throwing up was punishment enough.

5 Q. Why did you drink that first drink or drinks that
6 you described that made you throw up?

7 A. Back to the same reason. It was friends that had
8 the beer.

9 Q. Was it Gloria again, or somebody else?

10 A. No, I wasn't Gloria.

11 Q. Who was it?

12 A. The other next door neighbor.

13 Q. Who was that?

14 A. Randy Losbaugh.

15 Q. How do you spell his last name?

16 A. L-O-S-B-A-U-G-H, I assume.

17 Q. Lived on the same street?

18 A. Yes.

19 Q. How old was he compared with you?

20 A. I think the same age or a year older. We were
21 close in age.

22 Q. Was anybody else present when this happened?

23 A. Yes. I think there was another kid there, Alex.

24 They were baby sitting.
25 Q. You two were babysitting?
00331
1 A. I was not babysitting.
2 Q. Who was babysitting?
3 A. Randy was.
4 Q. And you were babysitting this kid Alex?
5 MS. CHABER: She says she was not.
6 THE WITNESS: I was not babysitting anybody.
7 MR. BARRON: Q. I'm sorry. I didn't mean to --
8 that's -- you're right.
9 A. I --
10 Q. I kind of grouped you and Randy together.
11 A. No. We --
12 Q. The person for whom the babysitting was taking
13 place was Alex?
14 A. No. He was a friend of Randy's that was also
15 there.
16 Q. Okay. How old?
17 A. You asked me if there was any other kids there.
18 Q. Okay. And let me see if I have this right. Alex
19 wasn't babysitting, you weren't babysitting. Randy was
20 babysitting?
21 A. He was supposed to be, yes.
22 Q. Okay. And the three of you were the ones who had
23 the alcohol?
24 A. It was Schlitz malt liquor, warm beer on ice.
25 Q. And how old was Alex?
00332
1 A. He was the same age as us. I believe we were 14
2 at the time.
3 Q. And the one who acquired this was Randy or Alex?
4 A. Randy.
5 Q. And who was the youngster being babysat by Randy?
6 A. I -- I don't recall his name. It was a -- a
7 family that lived on the same street that we lived on.
8 Q. How old was the youngster?
9 A. I don't know. Eight. I'm guessing on the age.
10 He was in bed sleeping.
11 Q. Now, did all three of you, meaning you, Randy and
12 Alex, all drink a lot, or just you?
13 A. I don't know how much they drank. I just remember
14 filling up a tall glass of beer and ice, and I drank one or
15 two or three of them, and my dad came and got me and I
16 threw up all the way home and when I got home, and that was
17 enough.
18 Q. Other than the fact that Randy was a friend and
19 Randy offered you the alcohol to drink, was there anything
20 else that you believed at the time influenced you to do
21 that, meaning to drink alcohol?
22 A. I don't know.
23 Q. Do you believe that you had been influenced by
24 commercials or ads for alcohol that led you to want to
25 drink as you did that day?
00333
1 A. I haven't seen them drink beer on ice on TV like
2 that. I don't know. I couldn't tell you.
3 Q. So your answer is no or --
4 A. No.
5 Q. -- you don't know?
6 A. I don't know.
7 Q. In your mind, was drinking the alcohol this day
8 that Randy wanted you to drink, also a rite of passage?

9 A. I guess so. It was, you know, the kids were doing
10 it.

11 Q. And you were also --

12 A. I tried --

13 Q. -- kind of curious about it because you had seen
14 adults drink alcohol or knew that they did or both?

15 A. Yes. I tried it and it didn't like me and --
16 yuck.

17 Q. Okay. So I want to go back again to the time
18 immediately following the first cigarette that Gloria got
19 you to smoke. You know that you went on to smoke again,
20 you are not sure where you got the cigarette, whether it
21 was from someone else or where you acquired it, correct?

22 A. Right.

23 Q. And if it was you who acquired the next cigarette,
24 did you acquire it from taking it from someone else as
25 opposed to going out and purchasing a whole pack?

00334

1 A. I don't -- that, I don't recall. I -- I don't
2 recall where my next -- you know, when I -- I just remember
3 where I used to buy them at the vending machine.

4 Q. Was there a time before you bought them at the
5 vending machine where you remember that you did borrow or
6 smoke or take some cigarette or cigarettes from others?

7 A. I never did personally.

8 Q. Okay. You had some friend or friends who did that
9 and then you would share?

10 A. Yes. We all did.

11 Q. Who was the next friend or friends with whom you
12 smoked after you smoked for the first time with Gloria?

13 A. You mean other people? My friend Kim.

14 Q. How soon after your first cigarette with Gloria
15 was it that you and Kim smoked?

16 A. I -- I don't know.

17 Q. She was the next person, though, who was a friend
18 with whom you smoked, correct?

19 A. Yes, that I -- that I remember.

20 Q. And how old was Kim?

21 A. A year younger than me, I believe.

22 Q. And was it Kim that came to you and said that she
23 wanted you to smoke with her?

24 A. I don't remember.

25 Q. Actually, wasn't it you that suggested to Kim that

00335

1 she smoke with you?

2 A. I don't remember that.

3 Q. Where did you get the cigarette or cigarettes?

4 A. She would get cigarettes from her grandmother.

5 Q. The first time that you smoked with her, you
6 believed it was from a cigarette or cigarettes that she --
7 Kim got from her grandmother?

8 A. I don't -- I don't remember.

9 Q. Was anybody else present when you smoked with Kim,
10 meaning Gloria?

11 A. I don't remember.

12 Q. Was Kim only 12 then when this took place, if she
13 was a year younger than you were?

14 A. She could have been.

15 Q. You and Kim hid the fact that you two were
16 smoking, I take it?

17 A. "Hid the fact," what do you mean?

18 Q. From others.

19 A. Well, I guess so.

20 Q. You didn't tell anybody?
21 A. Tell who?
22 Q. Your brothers or sisters, with whom you had a good
23 relationship.
24 A. No. Not that I recall, no.
25 Q. Kim's family, who may have had responsibility for
00336
1 a 12 year old?
2 A. I don't know.
3 Q. Okay. Who was the next person with whom you
4 smoked?
5 A. I don't know if it's in the specific order, but
6 Randy Losbaugh smoked with us. We were just a group of
7 kids who lived on the street and we would all hang out
8 together.
9 Q. And who provided the cigarette or cigarettes with
10 whom -- strike that.
11 Who provided the cigarette or cigarettes that you
12 and Randy smoked for the first time together?
13 A. I don't know. I can't honestly answer that
14 question.
15 Q. How soon after your first cigarette with Gloria
16 was it that you remember smoking with Randy?
17 A. I don't know.
18 MS. CHABER: How are you doing?
19 MR. BARRON: Do you want to take a break? We've
20 been going for about an hour, 45 minutes, I guess. I'm
21 happy to take one.
22 MS. CHABER: It's up to you.
23 THE WITNESS: I can go a little while longer.
24 MR. BARRON: Okay.
25 Q. Now, there came a time, as you've mentioned, where
00337
1 you started actually buying cigarettes from a vending
2 machine?
3 A. Yes.
4 Q. And it was at a service station that was, as you
5 mentioned, somewhere near an elementary school?
6 A. Yes.
7 Q. And you mentioned that you had to pass by that to
8 get to the junior high school?
9 A. Yes.
10 Q. Are you saying that that service station was
11 directly on the closest route from your home to junior high
12 school and that you didn't have to deviate at all to go to
13 the vending machine?
14 A. I would say it was a pretty direct route.
15 Q. Pretty direct, but not actually the most direct?
16 A. We rode our bicycles down the alleys all the way
17 to the school rather than ride on the street where the
18 traffic was, so it was a direct route to us.
19 Q. And you mentioned that you would use the lunch
20 money, thirty cents that your mother gave you, to purchase
21 the cigarettes?
22 A. I believe that's what it was.
23 Q. You mean that's what it cost in the vending
24 machine for a package of cigarettes?
25 A. Yes.
00338
1 Q. And is that the same amount that your mother would
2 give you each day for lunch money?
3 A. I don't remember how much she would give me. It
4 may not have even been every day that she gave me money.

5 Q. Did you mean to indicate, in what you've said
6 earlier in answering your lawyer's questions, that you
7 actually gave up lunch in order to take the money that was
8 given you for lunch to buy cigarettes?

9 A. I have used my lunch money, yes. I did use my
10 lunch money to purchase cigarettes.

11 Q. So you would not eat lunch at all?

12 A. That -- no. That's not true. I would still eat.

13 Q. Okay. If you gave up your lunch money for the
14 cigarettes at the vending machine, how would you have food
15 to eat for lunch then?

16 A. Sometimes we would bum money from other kids.

17 Q. Okay. What do you mean by "bum money from --"

18 A. Well, say, do you have an extra -- a nickel -- I
19 think rolls cost a nickel. You know, a nickel is not hard
20 to come by when you are asking for change for a kid in a
21 line.

22 Q. So there would be days where you'd buy, at the
23 vending machine, some cigarettes, have no money in your
24 pocket for lunch, and then acquire a nickel or something
25 from somebody else to buy a roll, and that would be your

00339

1 lunch?

2 A. Right. Or I wouldn't eat. I was a teenager.

3 Q. And girls who were worried about their weight --

4 A. I guess I -- I think -- thinking back, I -- I
5 couldn't, you know, tell you whether -- what day I ate and
6 what day I didn't, or whether I ate.

7 Q. Now, would your mother give you lunch money every
8 day?

9 A. I don't think so. Don't recall.

10 Q. How would it come about that she'd give you money
11 as opposed to not give you money on a particular day for
12 lunch?

13 A. I don't know. Hit or miss. It -- just like when
14 my kids decide. When I don't want to make lunch for them,
15 or whatever.

16 Q. Okay.

17 A. I -- I have no idea. That's ...

18 Q. That's what I was sort of trying to get at. So at
19 school there was some kind of a cafeteria at the junior
20 high school that you could purchase lunches at, correct?

21 A. Yes.

22 Q. But also you could bring your lunch --

23 A. Yes.

24 Q. -- in a bag or in a lunch pale or something, lunch
25 box, right?

00340

1 A. Yes.

2 Q. Or could you do a combination, bring some and then
3 also buy something?

4 A. Right.

5 Q. Were there days that you went to school where you
6 brought no lunch at all from home?

7 A. I suppose.

8 Q. Don't know for sure, though?

9 A. Yeah -- no. It's a long time ago to remember
10 stuff like that.

11 Q. Now, I don't know if your mom was like my mom, but
12 sometimes when that would happen to me she'd say, "Well,
13 how was lunch? What did you buy? Was it any good?" Did
14 that ever happen to you?

15 A. As a teenager?

16 Q. Yes.

17 A. I -- I couldn't recall that -- her asking me that
18 question specifically.

19 I was one of other kids that lived in the house,
20 so I couldn't tell you what she asked me when I came home
21 about my day.

22 Q. Did you ever tell her a fib, in other words, tell
23 her that you did buy something for lunch when what you had
24 really done is to take the money and buy cigarettes out of
25 a vending machine?

00341

1 A. Specifically, I don't recall what I said to her.

2 Q. Had your mother asked you whether you were smoking
3 at the time, would you have told her you were or would you
4 have fibbed?

5 MS. CHABER: Calls for speculation.

6 JUSTICE DOSSE: Sustained.

7 MR. BARRON: Q. Do you know whether you would
8 have told her the correct answer or whether you would have
9 fibbed had she asked you at this time?

10 MS. CHABER: Calls for speculation.

11 JUSTICE DOSSE: Sustained.

12 MR. BARRON: Q. If I remember correctly from
13 what you said, junior high in the Ventura County area was
14 seventh, eighth and ninth grade, correct?

15 A. Yes.

16 Q. And then high school was a three-year high school
17 of tenth, eleventh and twelfth?

18 A. In Ventura, yes.

19 Q. In Ventura. Can you describe, as accurately and
20 as precisely as you can, what your smoking was like from
21 the time that Gloria got you to smoke the first cigarette
22 to the time that you graduated from junior high school?
23 And by circumstances, I'm talking about the number of
24 cigarettes that you smoked and the brands that you smoked.

25 MS. CHABER: Objection. Calls for a narrative,

00342

1 compound.

2 JUSTICE DOSSE: You can break that down, if you
3 want. The objection is sustained.

4 MR. BARRON: Well, I can. I'm trying to speed it
5 up.

6 Do you really want me to go year by year?

7 JUSTICE DOSSE: Well, the objection is sustained.

8 MR. BARRON: Well, I'm not speaking to you, Judge,
9 I'm speaking to the counsel.

10 MS. CHABER: I made my objection.

11 MR. BARRON: You want me to rephrase it?

12 MS. CHABER: Uh-huh.

13 MR. BARRON: Okay. I can do that.

14 Q. In your own mind, when was the next change of
15 smoking practice on your part? From the time that you
16 started first buying cigarettes in a vending machine while
17 in junior high school?

18 A. What do you mean, in my own mind?

19 Q. Well, let's break it down even further. It may
20 take more time than I thought it might, but let's do it
21 this way, if we can.

22 You started smoking for the first time with Gloria
23 when you were 13. You then smoked some cigarettes
24 thereafter, you can't remember who provided them, but there
25 came a time when you started purchasing some yourself with

00343

1 lunch money out of the vending machine, correct?
2 A. Yes.
3 Q. When did that happen, as precisely as you can
4 state for us?
5 A. As precisely, I would say probably the eighth
6 grade I was purchasing.
7 Q. And when you say, "the eighth grade," can you be
8 more precise? Because, of course, the eighth grade starts
9 in generally around September and it ends generally in June
10 of the next year and it has two semesters, like most
11 schools.
12 A. But I don't know what time of year it was.
13 Q. You just know some time in the eighth grade?
14 A. Yes. It -- you asked for a general time period.
15 I would say eighth grade, yes, I was purchasing them.
16 Q. You are saying that some time in the eighth grade,
17 you are not sure when --
18 A. Right.
19 Q. -- but some time in the eighth grade is when you
20 believe you first started to purchase cigarettes yourself
21 in the vending machine?
22 A. Yes.
23 Q. And from the time of your first cigarette to that
24 time when you start purchasing from a vending machine, can
25 you tell me what your best and most precise estimate is as
00344
1 to the number of cigarettes you would smoke in -- if it's a
2 day, a day; if it's a week, a week; if it's a month, a
3 month.
4 A. I couldn't tell you how many cigarettes I smoked.
5 Q. Have absolutely no reasonable estimate to provide
6 us?
7 A. You mean like if I was walking to school, I may
8 have had a cigarette walking to school.
9 Q. What I mean is not so much where you had it, and
10 I'm not trying to find out what may have happened, because
11 anything is, I suppose, possible.
12 What I am trying to find out is, if you have a
13 memory that would allow you to give me --
14 A. I --
15 Q. -- any estimate at all that you think is at all
16 reasonable as an estimate for the number of cigarettes that
17 you would smoke from the time Gloria got you to start to
18 the time you started buying them from a vending machine for
19 any particular time frame, be it a day, a week or a month.
20 A. I have no idea.
21 Q. Okay.
22 A. I -- I can't count cigarettes. I don't remember.
23 Q. So now we are some time in the eighth grade and
24 you go to the vending machine and start buying them from a
25 vending machine. What is your recollection as to whether,
00345
1 by this time, you had developed a brand of preference?
2 MS. CHABER: By "this time," being when she was
3 buying from the vending machine?
4 MR. BARRON: Yes.
5 THE WITNESS: They were Marlboros.
6 MR. BARRON: Q. Can you be as specific as you
7 can as to when Marlboro became for you the brand of
8 preference for the first time?
9 A. When I bought them. That was the first brand I
10 purchased.
11 Q. At the vending machine?

12 A. Yes.

13 Q. Before this time, you really had not had a brand
14 preference, that purchase became your first act of
15 establishing a brand preference, the fact of buying them
16 from the machine?

17 A. Yes. I -- yes.

18 Q. Did Gloria have a brand preference by that time?

19 A. I don't know.

20 Q. Did Randy have a brand preference by that time?

21 A. I can only suggest.

22 Q. I don't want you to suggest.

23 A. No. I can't honestly tell you what he bought.

24 Q. Did Kim have brand of preference by that time?

25 A. I think she smoked her grandmother's cigarettes.

00346

1 Q. Which were whether?

2 A. Raleighs.

3 Q. Okay.

4 A. I think.

5 Q. What other friends by this time did you have that
6 were close to you, or part of your group, or click,
7 whatever term would be most appropriate?

8 A. There was Randy and his sister Debbie, and I had a
9 friend Brenda and Ann.

10 Q. Was Debbie a smoker by this time?

11 A. I don't know.

12 Q. Was Brenda a smoker by this time?

13 A. I know she was in the ninth grade. I don't know

14 any ...

15 Q. Was Ann a smoker by this time?

16 A. I don't know.

17 Q. Whenever it was, and you think it was the ninth
18 grade that you know Brenda was smoking, what was her brand
19 of preference, if she had one?

20 A. I can't tell you for certain.

21 Q. What was your grandmother's brand of preference?

22 A. I believe it was Pall Mall.

23 Q. What was your mother's brand of preference when
24 she smoked?

25 A. I don't know.

00347

1 Q. What was your father's when he smoked?

2 A. I believe it was Pall Mall.

3 Q. By this time when you purchased Marlboros from the
4 vending machine for the first time to establish it as your
5 brand of preference, was there a celebrity, be it a movie
6 star, a radio star, a model, a sports athlete, anyone else
7 that you particularly looked up to and associated with that
8 person being a Marlboro person?

9 A. Just the Marlboro man images is all I can --

10 Q. Any other?

11 A. Not that I specifically can recall.

12 Q. By this time when you purchased out of the vending
13 machine, did you consider yourself in any way a tomboy?

14 A. What do you mean by that?

15 Q. Well, that's a good question. We always use the
16 phrase a lot, but people have different impressions, I
17 guess, about it.

18 Were you more interested in doing things that
19 people tended to classify as boy activities than girl
20 activities?

21 A. I did both. I played barbies, and I played Army
22 with the guys. What's -- there's no big deal in that, is

23 it?

24 Q. So --

25 MS. CHABER: Can you -- at a convenient spot, I

00348

1 need to take a break.

2 MR. BARRON: Sure.

3 MS. CHABER: But, you know, if you want to go a
4 couple more questions, I don't ...

5 MR. BARRON: Q. Were you, when you selected
6 Marlboro at the vending machine as the first act of your
7 brand choice or decision, doing that because you wanted to
8 in any way model yourself after or be like the cowboy who
9 was the Marlboro man?

10 A. No.

11 Q. Okay.

12 A. Although I did like horses.

13 Q. Were you buying Marlboro cigarettes at the vending
14 machine because it made you feel like you were buying a
15 horse product or you were associating with horses?

16 A. No. The other kids smoked Marlboros.

17 When you asked me what brand they smoked -- bought
18 specifically, I couldn't tell you what brand they bought
19 specifically, but I know the other kids were smoking
20 Marlboros because they shared them with me.

21 But I couldn't -- I can't honestly tell you what
22 they bought because maybe they didn't buy them. I don't
23 know. Do you understand what I'm --

24 Q. Well, I'm not sure, because I asked you not what
25 other kids -- I asked you what other kids' brand of

00349

1 preference was.

2 A. That and --

3 Q. So are you --

4 A. I don't know if they always, always smoked them.

5 All I know is that teenagers that I was around, we most --
6 they -- they smoked Marlboros. Whether that's their
7 preference, that's their opinion. I can only tell you what
8 mine was. Is that -- did I make myself clear?

9 Q. So you are saying -- in answering my previous
10 questions when I said what was so and so's brand of
11 preference, you were thinking that even though that person
12 was always smoking that brand of cigarettes, you weren't
13 sure that it really was the one that the person preferred?

14 A. I can't answer for him --

15 Q. Okay.

16 A. -- or anyone else. I can only answer for myself.

17 Q. Let's go back, then, and make sure what was the
18 circumstances back then.

19 When you first bought Marlboros at the vending
20 shown and made it your brand of preference, by that time
21 was Randy always smoking a particular brand of cigarettes?

22 A. I remember him having Marlboros.

23 Q. As the only brand?

24 A. I -- I can't tell you that.

25 Q. You just remember he had Marlboros at some time?

00350

1 A. Yes.

2 Q. Okay. What about Kim?

3 A. I don't know.

4 Q. What about Debbie?

5 A. I don't know.

6 Q. What about Ann?

7 A. Ann, I don't know.

8 Q. What about Brenda?
9 A. Brenda, she had Marlboros, I remember. She's --
10 but I can't tell you --
11 Q. Always?
12 A. I don't know. I wasn't around her always. I
13 can't answer for other people.
14 Q. Did you ever see Brenda with cigarettes other than
15 Marlboros?
16 A. Not that I remember. I ...
17 Q. So before you purchased Marlboros out of the
18 vending machine for the first time and made it your brand
19 of choice as the first cigarette of -- of choice, who,
20 other than Randy, who was close to you, do you remember as
21 a smoker, and a smoker who usually or frequently seemed to
22 be associated with smoking Marlboros as opposed to other
23 brands?
24 A. I don't know. I --
25 MR. BARRON: We can take a break now. Thanks.
00351
1 VIDEO OPERATOR: Going off the record. The time
2 is 11:08.
3 (Recess taken from 11:08 to 11:32.)
4 VIDEO OPERATOR: We are back on the record. The
5 time is 11:32.
6 MR. BARRON: Q. Okay. We've had a recess. Are
7 you able to go forward?
8 A. Yes.
9 Q. And, again, please let me know if you need a break
10 or recess, or if you need to stop the deposition and resume
11 it at some other time if you are not giving your best and
12 most accurate answers. Okay?
13 A. Yes.
14 Q. By the time that you used the vending machine for
15 the first time, did you have a boyfriend?
16 A. I don't remember.
17 Q. By that time, did you have a romantic interest in
18 any particular boy?
19 A. I couldn't tell you anybody specifically.
20 Q. By this time, was there a particular boy that --
21 whether you had a romantic interest in or not, you wanted
22 to particularly impress?
23 A. I don't know.
24 Q. By that time, was there a girl or girls that you
25 particularly wanted to impress?
00352
1 A. Just, you know, to be part of the crowd of
2 friends, that was --
3 Q. And --
4 A. Any teenager worries about what other, you know,
5 peers think of them; but in particular, no, I don't ...
6 Q. And by that time, meaning, again, when you went to
7 the vending machine and used it for the first time and
8 selected Marlboro as your brand for that time, and to
9 whenever forward it was, who were the members of what you
10 called your crowd of friends?
11 A. I believe I've already told you.
12 Q. Same ones --
13 A. Yes.
14 Q. -- that you've mentioned earlier? Okay.
15 Do you know, by that time, how many different
16 brands of cigarettes you had smoked at all, in other words,
17 tried at all, tasted at all?
18 A. No.

19 Q. Can you give me a reasonable estimate?
20 A. Well, whatever it was that I first smoked, and
21 Marlboro and -- three, I guess.
22 Q. How many different types of -- or brands of
23 cigarettes, rather, have you smoked your whole life, even
24 in part?

25 A. Camel -- do you want me to name them as --

00353

1 Q. No. I don't think we need that at this time,
2 because I think we've had a pretty good description of
3 brands that you smoked with any consistency for any period
4 of time.

5 What I am really trying to find out now is how
6 many cigarette brands you've tasted, whether it be just
7 once or more than once.

8 A. I don't know.

9 Q. Can you give me your best estimate?

10 A. Five, six. I have no -- I can't honestly say
11 because I -- unless I sit here and -- I don't know.

12 Q. I'll give you the chance to sit there and think
13 about it for a minute if that would help, in other words,
14 to have you kind of -- I thought you were trying to
15 remember back to different times.

16 A. You want me to think, in my mind, what different
17 types of cigarettes I have tried?

18 Q. Brands.

19 A. Brands of cigarettes I have tried?

20 Q. Yes.

21 A. Any time?

22 Q. Yes.

23 A. A good estimate, I would say would be 10 or 11
24 over the years, you know, here and there trying one, you
25 know.

00354

1 Q. Did some or all seem to taste different than
2 others?

3 A. I guess.

4 Q. Which of those that you remember having tried or
5 smoked at all, including Marlboro and Camel, suited you
6 from a taste standpoint the best?

7 A. Camel and Marlboro.

8 Q. It's hard to describe a taste when people ask what
9 does something taste like, if it's meat, sometimes they say
10 "chicken" to a lot of things.

11 Is there any way that you can describe for me what
12 the taste of Marlboro is like, as opposed to some of those
13 other brands that you tried and didn't like as well?

14 A. I don't know. I guess they weren't yucky tasting.
15 I haven't smoked in a year. I --

16 Q. You mentioned that you inhaled because it was icky
17 not to, when you answered one of your lawyer's questions.

18 I take it from that, even though you now have the
19 feelings you do about what cigarettes have done to you,
20 there was a time where they didn't taste icky, they tasted
21 good, is that correct?

22 A. Yes.

23 Q. And that was part of the enjoyment and reason for
24 smoking, correct?

25 A. I suppose, yes.

00355

1 Q. And there were other reasons why you did besides
2 those that you've already mentioned? I mean, for example,
3 it seemed to you to be associated eventually with

4 activities that you enjoyed, correct?
5 A. What seemed to be --
6 Q. Smoking.
7 A. What kind of activities are you talking about?
8 Smoking --
9 Q. Having coffee, following a ride on a motorcycle
10 that was exciting, things of that kind.
11 A. I don't know about following a ride on a
12 motorcycle, but I -- I drank coffee and smoked cigarettes,
13 yes. They go together.
14 Q. Were there other things like this that seemed to
15 go together with smoking?
16 A. After you eat, you smoke.
17 Q. Anything else?
18 A. Whenever my body triggered to tell me it wanted a
19 cigarette.
20 Q. Anything else?
21 A. It was an all-day thing.
22 Q. Anything else that you can add?
23 A. Any -- any of all-day activities. Whenever I sat
24 down and/or stood up, or whatever, smoked a cigarette.
25 I -- it was when my body told me I wanted one, I suppose.

00356

1 Q. From the time that you first purchased the
2 Marlboros and it became your brand, to when you first
3 started also smoking Camels, was how long a period?
4 MS. CHABER: Could I hear that back?
5 MR. BARRON: I'll just rephrase it probably in a
6 better way.
7 THE WITNESS: I was in --
8 MS. CHABER: Wait. I need the question again,
9 Leslie. Sorry.
10 MR. BARRON: Do you want to have it reread or do
11 you want me to rephrase it?
12 MS. CHABER: However you want to do it. I just --
13 I missed the question.
14 MR. BARRON: Okay.
15 Q. We were talking about the fact that you went to
16 the vending machine and Marlboro became your brand of
17 choice when you first bought them from the machine,
18 correct?

19 A. Right.
20 Q. And they stayed your brand of choice for a period
21 of time?
22 A. Yes.
23 Q. It was your exclusive cigarette that you would
24 buy, it was your exclusive cigarette that you would smoke,
25 except if there was ever a time when you might take a puff

00357

1 of someone else's or borrow it or something, is that right?
2 A. Right.
3 Q. Okay. Then there came a time, though, that you
4 began to also smoke Camels?
5 A. For a time, yes.
6 Q. Okay. Can you be as precise as you can as to when
7 that occurred, that you also then began to smoke Camels,
8 along with Marlboros?
9 A. I believe I was 16.
10 Q. Now --
11 A. Fifteen or 16. I was in -- it was -- I was in my
12 senior year of high school.
13 Q. You anticipate what I was going to ask you. I was
14 going to tie it into a period so we could be as close to

15 being accurate as we could.

16 MS. CHABER: And, Counsel, if I could just
17 interrupt for a second. I know yesterday we talked about
18 that there was some confusion from the interrogatories that
19 Ms. Whiteley had provided.

20 MR. BARRON: I'll allow you --

21 MS. CHABER: And we have amended them, and it just
22 might help you -- I'll pass these out -- in terms of dates
23 and so fourth, an amended set of answers.

24 MR. BARRON: Let me look at that in just a moment.

25 Q. But while we are on this train of thought, if we
00358

1 could -- when you say "senior in high school," because you
2 actually combined or crunched --

3 A. Right.

4 Q. -- junior and senior years together --

5 A. Yes.

6 Q. -- which you mentioned yesterday?

7 A. Yes.

8 Q. Are we talking then about that year some time that
9 would have started in the fall around September of 1975 and
10 led to a graduation from high school in the summer around
11 June of 1976?

12 A. It was in that time period.

13 MR. BARRON: Okay. Now, with counsel's
14 permission, maybe we can go off the record for just a time,
15 enough for me to take a looked a this amended document
16 she's providing and see if this leads to any further
17 questions.

18 MS. CHABER: Sure.

19 VIDEO OPERATOR: Going off the record. The time
20 is 11:43.

21 (Discussion off the Record.)

22 VIDEO OPERATOR: Back on the record. The time is
23 11:45.

24 MR. BARRON: Q. Now, by what time, following
25 your first use of the vending machine and the selection of
00359

1 Marlboros, was it that you are able to tell me, with
2 reasonable accuracy, how many cigarettes a day or a week or
3 a month you were smoking?

4 A. What do you mean by "what period"?

5 Q. Well, we have testimony that's fairly thorough
6 already about what you could remember and not remember
7 about the number of cigarettes you smoked, I believe, up
8 until the time that you started buying them from the
9 vending machine.

10 A. Uh-huh.

11 Q. So now I am talking about following the time that
12 you make the first purchase from the vending machine of
13 cigarettes, which also was the time that you made your
14 brand selection of Marlboro.

15 A. Right.

16 Q. Following that, can you tell me, as precisely as
17 you can, when you can tell me you were smoking a certain
18 number of cigarettes during any particular time, meaning a
19 day, a week or a month? I mean, how many were you smoking?
20 It looks like I'm confusing there. Let me ask it this way.

21 A week following the time you bought the first
22 pack of cigarettes from the vending machine, the ones that
23 were Marlboros, can you tell me, that week following, how
24 many cigarettes per day or per week or per month you were
25 smoking regularly?

00360

1 A. Not accurately, no.
2 Q. When can you first do that? For what time period
3 can you first do that, if you can at all?
4 A. Only in recent years, accurately, to tell you how
5 many, you know.
6 Q. And when you say "recent years," what do you mean,
7 as precisely as you can state it?
8 A. Last few years that I smoked.
9 Q. And what do you mean, as precisely as you can say
10 it by the phrase, "last few years"? What do you mean,
11 "last few years"?
12 A. You just asked me for a time period.
13 Q. Right. A "few" has different meaning --
14 A. To be accurate --
15 Q. -- to people? I'm trying to get from you --
16 A. Two years. Okay? If you want a number. The last
17 two years I was smoking a pack and a half to two packs a
18 day, that I can honestly tell you -- give you an honest
19 estimate.
20 Q. Okay.
21 A. Before that I -- I couldn't tell you, I mean,
22 precisely how many cigarettes I smoked. I -- I suppose it
23 depended on what I was doing at the time.
24 Q. And I appreciate that you can't give me precise
25 numbers.

00361

1 Is it also true that you can't give me what you
2 believe is a reasonably accurate estimate or number, other
3 than for the last two years?
4 A. Well, you just asked me for a time period and I
5 just gave you one.
6 Q. That's right. So now, I'm --
7 A. And even in that time period, what a person does
8 throughout the day is not the same thing every day so --
9 you don't smoke or do anything the same amount of time a
10 day, so I can't be precise with you.
11 Q. I understand the precise part. Now I am asking
12 for something not absolutely precise. I am asking for
13 something you believe is a reasonable estimate.
14 Are you able to, either average the numbers out,
15 or in any other way provide a reasonable estimate? I'm not
16 trying to force you to. If you can't, I'm going to accept
17 your answer.
18 A. Well, you'll have --
19 Q. But are you able to provide a reasonable estimate
20 for any time frame after you purchased cigarettes from the
21 vending machine, up to a couple years ago, for how many
22 cigarettes you'd smoke in any time frame, be it a day, a
23 week, a month, or whatever?
24 A. I have no idea of -- I mean, I can't -- I can't
25 honestly tell you that in the eighth grade I, you know,

00362

1 smoked so many cigarettes a day. I don't ...
2 Q. Or so many packs a month, or so many packs a year?
3 A. No. It's not something that I --
4 Q. Okay.
5 A. -- keep tabulating in my brain.
6 Q. And is your answer the same for each years up
7 until a couple of years ago --
8 A. Only that --
9 Q. -- that you would not be able to --
10 A. Only I know when I quit smoking I was up to

11 smoking a pack and a half to two packs a day.
12 Q. So your answer for not only the eighth grade,
13 would be the same for the ninth grade, the tenth grade, and
14 all the years up to about a couple of years ago?

15 A. Honestly, I would have to say so because I can't
16 honestly tell you exactly how many cigarettes I smoked.

17 Q. You would be able to say, though, honestly, that
18 you were smoking the most number of cigarettes when you
19 reached that level of a pack and a half two years or so
20 ago, correct?

21 A. Yes. That's -- that was my maximum, a pack and a
22 half -- two packs rarely; but mostly a pack a day, pack and
23 a half, depending on what was going on, I guess.

24 Q. When, during your senior year you first started to
25 smoke Camels, as well as continuing to smoke Marlboros, did

00363

1 the number of cigarettes that you smoked, as best you
2 recall, remain about the same?

3 A. I suppose. I don't know.

4 Q. You have no recollection that the numbers went up
5 or down, is that correct?

6 A. Right.

7 Q. And whenever it was that you made the complete
8 switch or transition from Marlboro to Camels, did the
9 numbers that you smoked remain the same?

10 A. When I switched for good to Camel?

11 Q. Yes.

12 A. I smoked more.

13 Q. Immediately, or was it years later that you got up
14 to the pack and a half?

15 A. It was a gradual increase --

16 Q. How long --

17 A. -- over time.

18 Q. -- did it take you to go from whatever number you
19 were smoking, whatever that number was, up to what you
20 remember being, at least by a couple of years ago, a pack
21 and a half?

22 A. I don't know.

23 Q. Did Camel taste better, or not as good as, just as
24 equal to Marlboro?

25 A. They were better.

00364

1 Q. Darn.

2 Is that one of the reasons why you stayed with
3 Camels then --

4 A. I smoked.

5 Q. -- was the fact it tasted better?

6 MS. CHABER: Wait, wait, wait. Misstates the
7 testimony. "Stayed with Camels," it's vague as to time
8 because she smoked Camels, didn't smoke Camels, and went
9 back to Camels, so --

10 MR. BARRON: You are correct.

11 MS. CHABER: -- it's confusing.

12 MR. BARRON: And I don't want to do that.

13 Q. And let me ask it this way: When did you first
14 develop the idea that Camels tasted better than Marlboros?

15 A. When I tried the lights.

16 Q. Before that time, what was your thinking as to the
17 taste of Camels compared to the taste of Marlboros? Which,
18 if any, did you prefer?

19 A. At that time, the Marlboros.

20 Q. And your amended answers to these written
21 questions that your counsel gave to me a few moments ago,

22 indicates that -- that you went to the Camel Lights,
23 approximately 1984?
24 A. I think so. The year --
25 Q. And is that the time when you first thought that
00365 1 the Camels tasted better than Marlboros?
2 A. Yes.
3 Q. Now, when you first tried Camels, you tried them
4 as a senior in high school and they were Camel regulars, am
5 I correct?
6 A. Right.
7 Q. And by "regulars," you mean the shorter, stubbier
8 ones that did not have a filter?
9 A. Right.
10 Q. And by that time, did you have a boyfriend who was
11 kind of a biker-type?
12 A. Yes.
13 Q. And he was a person who smoked those regular
14 Camels?
15 A. Yes.
16 Q. And he had smoked those before he became your
17 boyfriend?
18 A. I don't know.
19 Q. Well, when you first met him and before he became
20 a boyfriend, do you know whether he was smoking Camel
21 regulars?
22 A. I have no idea.
23 Q. Was he your first boyfriend?
24 A. No.
25 Q. What was -- what is his name?
00366 1 A. Mark.
2 Q. Last name?
3 A. Fanin.
4 Q. Spelled?
5 A. F-A-N-I-N, I guess.
6 Q. Okay. Do you know whether he's still in the
7 Ventura-Ojai area?
8 A. I have no idea where he is.
9 Q. When is the last time that you knew where he was?
10 A. Then.
11 Q. In high school?
12 A. Yes.
13 Q. You never heard what happened to him, whether he
14 went off to the Navy, or went off to college or --
15 A. Truck driving. I have heard he's truck driving.
16 I'm sorry.
17 Q. Now, you mentioned, in answering some questions
18 that your lawyer asked you, that when you first started
19 smoking Camels, as well as Marlboros, you had this
20 boyfriend who was a biker-type who smoked them, and you
21 said something about, it seemed like a tough thing to do,
22 and you liked them because it sort of made you tough. Do
23 you remember --
24 A. Yeah.
25 Q. -- that?
00367 1 A. Yeah.
2 Q. Okay.
3 A. Yes.
4 Q. Can you explain a little bit more what you meant
5 by that? I mean, for example, can you tell me, what do you
6 mean by "tough"?

7 A. Just attitude. You know, cool.
8 Q. Is "tough" and seeming to be tough, the same as
9 being cool, in your mind?
10 A. That's what I meant by a teenager, you know, being
11 cool.
12 Q. Well, I'm -- words can have multiple meanings --
13 A. "Tough" has nothing to do with being violent, or
14 anything like that.
15 Q. I'm not --
16 A. It's just being cool, accepted, you know, other
17 kids not thinking I'm a geek, you know.
18 You don't want to be the pimply-faced teenager on
19 the block. I felt that I was cool. And not only that,
20 nobody else wanted to bum straight cigarettes off of me,
21 which was another reason for smoking them, because nobody
22 wanted to smoke them.
23 Q. Well, I'm not sure how it was in your time in high
24 school and how it was in Ventura, and things change over
25 time, but most high school kids did not have motorcycles,
00368
1 say, when I was in high school.
2 A. I didn't either.
3 Q. Okay. Was he one of the few who had a motorcycle?
4 A. I never rode on his motorcycle.
5 Q. I'm not asking that. Was he one of the few who
6 had a motorcycle, this boyfriend?
7 A. Few, what?
8 Q. Few kids at school who had a motorcycle.
9 A. He wasn't from the high school.
10 Q. Okay. I misunderstood, then.
11 Where was he from?
12 A. Oxnard.
13 Q. Was he your age or older?
14 A. Older.
15 Q. How much older?
16 A. I don't know. You know, I don't remember how old
17 he was at the time.
18 Q. Well, your best estimate.
19 A. Maybe three years. Two, three years older.
20 Q. Was he in school at the time?
21 A. I don't believe so.
22 Q. Was he working?
23 A. I don't know.
24 Q. Did you ever know and you just don't remember?
25 A. We weren't -- it wasn't -- it -- it wasn't a
00369
1 serious relationship, sir. He was a -- a male friend.
2 Q. Okay. So he wasn't a boyfriend, he was just a boy
3 with whom you were friendly?
4 A. I saw him, I dated him. Does that -- it doesn't
5 mean we were going steady or anything.
6 Q. I don't know --
7 A. I mean, is it important? What does that have to
8 do with what I smoked? What does he have to do with the
9 brand of cigarettes I smoked?
10 Q. That's what I am trying to find out. It was a
11 subject raised by your lawyer when she asked you questions
12 about when you started smoking Camel and -- and there were
13 answers relating it to this boy.
14 A. And you --
15 Q. It was called a boyfriend when you answered, and
16 he was a biker.
17 A. Well, he was a boy and he was a friend. I mean,

18 we -- the -- what I am saying is, I smoked Camels because
19 he smoked Camels at that time. What -- what -- what else
20 is there that -- that -- I mean, that he has to do with it?
21 You know what I --

22 Q. Okay.

23 MS. CHABER: That's --

24 THE WITNESS: It seems stupid.

25 MS. CHABER: You've answered the question.

00370

1 MR. BARRON: Q. You mentioned that one of the
2 reasons you smoked them was because other people weren't
3 and, therefore, they wouldn't bum them off you, right?

4 A. Right.

5 Q. So to see anyone in that time frame at your school
6 among your friends who smoked Camel regulars would have
7 been somewhat unusual?

8 A. Yes.

9 Q. And in addition, the Camel short cigarettes
10 without filters created an image of some ruggedness or
11 toughness in the people who smoked them, isn't that true?

12 A. I don't know. I can only tell you what I feel.

13 Q. And that's what you felt?

14 A. Nobody wanted to smoke my cigarettes.

15 Q. Because they seemed to be strong?

16 A. I guess.

17 Q. And --

18 MS. CHABER: Don't guess or speculate as to what
19 other people might have thought.

20 JUSTICE DOSSE: Sustained.

21 MR. BARRON: Q. It was your view at the time --
22 your thought at the time, that it seemed to give the idea
23 of something tough to do, and that it made you kind of
24 tough because the cigarette was, among other things,
25 strong, correct?

00371

1 A. My opinion was it -- I just gave you my opinion on
2 it.

3 Q. Can you answer that question that I asked you just
4 now?

5 A. What -- repeat it. You -- you -- you go on, and
6 then it's seems like we talked about it already.

7 Q. One of the reasons why it seemed like a tough
8 thing to do, or made you feel kind of tough, was that the
9 cigarette tasted stronger, or you thought it was stronger
10 than other cigarettes, correct?

11 A. You could say I was being tougher because it had
12 no filter.

13 Q. That was going to be my next question. And what
14 was it about the fact that it had no filter that made it
15 seem a tougher thing to do?

16 A. I don't -- getting tobacco in your mouth. I don't
17 know. In particular -- all -- all I know is that when
18 somebody else says, "Can I bum a cigarette off you," and I
19 pulled out my Camel straights, they went "yike," and I
20 didn't have to share them.

21 Q. Did it also seem to you that it was a stronger
22 cigarette?

23 A. Yes.

24 Q. And by this time, you understood that filters were
25 supposed to have the potential of filtering out some of the

00372

1 things in the tobacco or the cigarette smoke, isn't that
2 true?

3 MS. CHABER: Lacks foundation, calls for
4 speculation.

5 JUSTICE DOSSE: Overruled.

6 You can answer the question.

7 THE WITNESS: I thought the filters kept the
8 tobacco out of your mouth.

9 MR. BARRON: Could we have the question I asked
10 reasked by the Court Reporter, and have you answer it if
11 you are able, please.

12 MS. CHABER: She just did.

13 JUSTICE DOSSE: I think it was answered. It was
14 responsive. You can ask the next question.

15 MR. BARRON: Q. Did you have any idea at all,
16 did you have any information at all, did you have any hint
17 at all that the filter on cigarettes were supposed to have
18 potentially the capacity to filter out or reduce any of the
19 things contained in the tobacco or the tobacco smoke?

20 A. I don't think so. I was a teenager. They are not
21 educated in those things.

22 Q. You had never heard anybody say anything like
23 that, is that correct?

24 A. Say anything like what?

25 Q. That filters were supposed to filter out or take
00373

1 out some things that were in the tobacco or the smoke or
2 reduce them?

3 A. I don't know. Maybe in advertising they may have
4 said "smooth taste," but I have no idea with -- filtering
5 anything.

6 Q. You had never read anything written by anybody,
7 including the tobacco companies, that suggested that
8 filters were supposed to take out or reduce any of the
9 things in the tobacco or in the smoke?

10 A. As a teenager? I couldn't answer that. I can't
11 honestly say what I read.

12 Q. And you never heard that anyone -- or read
13 anything by that time that suggested that filters might
14 have the potential to take out or reduce any of the things
15 in tobacco or it's smoke, is that correct?

16 A. I don't know.

17 Q. Did the short Camels without filter have an
18 association, in your mind, that people who smoked them
19 tended to be a little stronger, or a little tougher, or a
20 little more independent, a little more rugged, a little
21 more counter-culture, or any of those things?

22 A. I don't know. I don't recall having an opinion on
23 other people's smoking.

24 I -- you are asking me marketing questions that
25 I -- I don't know.

00374

1 Q. Isn't it true that in your mind at that time,
2 Camels regular, without filters, tended to have, in your
3 mind, an association that it meant that people who were
4 smoking them were the kind of, people who were somewhat
5 tougher, not just meaning cool, but somewhat physically or
6 emotionally tougher and who were -- let's leave it at that,
7 first of all.

8 A. That -- no.

9 Q. Or that the people who smoked them were in some
10 way a little bit more rebellious than others?

11 A. I can only answer for myself.

12 Q. And what's your answer for yourself?

13 A. That the -- the person that I knew who smoked

14 them, I only know what he was like as a person. I have no
15 idea what the other people were like who smoked Camels.

16 Q. So what is your answer?

17 A. My answer was that he was a biker-type person, and
18 that's all it was, a remark this I made to my attorney.

19 Q. And what's a biker-type person, in your mind?

20 A. In my -- somebody who likes motorcycles.

21 Q. Nothing more, nothing less?

22 A. Nothing more, nothing less, what? It's a
23 lifestyle of -- a hobby.

24 Q. What is the lifestyle of a biker, in your mind?

25 A. They ride motorcycles.

00375

1 Q. Anything else?

2 A. I don't know. Well, whatever else they do in
3 their life. I only know what I do.

4 Q. It has no other association to you at all?

5 A. What?

6 Q. A biker lifestyle.

7 A. What does that have to do with Camels? I mean,
8 what -- with your question, you are going on and on, and
9 then you are -- now I am confused.

10 I was just saying this guy that smoked Camels rode
11 a -- he was a biker. That's ...

12 Q. Well --

13 A. For goodness sakes. I can't see analyzing him as
14 a person that's -- you know, that -- what's the point?

15 Q. I'm only trying to find out, to the best of your
16 ability, what you have in mind when you use a phrase like
17 quote, biker-type, close quote --

18 A. They ride.

19 Q. -- or "biker lifestyle."

20 And to me, I have certain images that come to
21 mind, and I'm trying to find out, though, what you mean and
22 what images come to your mind.

23 A. They ride motorcycles.

24 Q. Nothing more, nothing less?

25 A. Whatever they do in their life is their business.

00376

1 I don't -- I don't know what specifics you want me to do.
2 You buy a magazine and -- and -- see, I don't know if you
3 don't understand what a biker is. I can't explain it to
4 you.

5 Q. At the time --

6 A. You've got to be one.

7 Q. -- did you believe that a biker-type was more
8 willing to take risks?

9 A. I -- I can't answer that.

10 Q. Or more likely to be resistant to authority?

11 A. I don't know. That's --

12 Q. Or more rebellious?

13 A. I couldn't tell you. It depends on the person.

14 Q. Of course.

15 A. Right.

16 Q. But if you call somebody a biker-type --

17 A. They ride a bike.

18 Q. That's all you meant?

19 A. Right.

20 Q. How about you at that time --

21 A. Yes.

22 Q. -- at that time did you consider yourself in any
23 way somewhat more resistant to authority than the average
24 person at that age?

25 A. What authority? I -- I followed the rules. I
00377
1 mean, what --
2 Q. Well, not totally.
3 A. Well, I -- I -- I don't know what you mean exactly
4 by resisting authority.
5 Q. Not following authority.
6 A. Whose authority?
7 MS. CHABER: Well, I would object. It's vague and
8 ambiguous.
9 JUSTICE DOSSE: Ask the question. It's not in a
10 question form right now.
11 VIDEO OPERATOR: We also need to change the tape.
12 MR. BARRON: Okay.
13 VIDEO OPERATOR: Ready? This marks the end of
14 tape 1 of volume 3 in the deposition of Leslie Whiteley.
15 Going off the record. The time is 12:13.
16 (Discussion off the Record.)
17 VIDEO OPERATOR: This marks the start of tape 2 of
18 volume 3 in the deposition of Leslie Whiteley. Going on
19 the record. The time is 12:17.
20 MR. BARRON: Q. Following up on the last idea
21 that you raised about following the rules. I think you did
22 mention, in answering your lawyer's questions, that you
23 remembered that the high school did not allow smoking on
24 campus, isn't that correct?
25 A. Yes.
00378
1 Q. And I think you -- did you not acknowledge in
2 answer to your lawyer's questions, that you did smoke at
3 school?
4 A. Yes.
5 Q. So there were some rules, at least, that you
6 didn't always follow, fair enough?
7 A. Yes.
8 Q. Was that the only rule at school that you did not
9 follow or try to follow?
10 A. What do you mean, "the only rule"? I ditched
11 every now and then, just like other students did any other
12 time in school.
13 Q. Any other rules that you did not always try to
14 follow?
15 A. None that I can recall.
16 Q. Did the rule -- did the school have other rules
17 besides the two that we've talked about, one for not
18 smoking on campus, and the other for not ditching?
19 A. I suppose there's a rule for everything. I --
20 Q. Okay.
21 A. You know, the same with rules anywhere, I suppose.
22 There's more than just two rules.
23 Q. And as best you recall, you tried to follow all
24 the other rules --
25 A. Yes.
00379
1 Q. -- that the school had?
2 A. That I -- that I can remember, yes.
3 Q. Were there rules that you remember the school had
4 that you thought had a safety purpose associated with them?
5 A. I -- not that I'm aware of.
6 Q. The school didn't have, for example, a rule about
7 carrying certain items on to campus?
8 A. I -- I don't know. I don't read all the rules for
9 school. They don't hand them out to you and you don't read

10 them. I don't -- I don't know.

11 Q. Well, for example, did not your school have a rule
12 that you believed existed, at least, that was prohibitive
13 of people carrying knives or guns on campus?

14 A. I don't know. I couldn't tell you exactly what
15 the rules were, the exact rules. I can't -- contact the
16 school.

17 Q. Did the school have any rules about, for example,
18 during gym class to try to help insure the safety of people
19 participating in the class or help prevent injuries?

20 A. That's a pretty broad question. I mean, it's --
21 any time you have -- I -- I don't know what you expect me
22 to answer that with. Just -- just behaving is -- is
23 enough, isn't it, that you don't hurt somebody else in
24 P. E. class? Isn't that what you are getting at? I'm --
25 I'm --

00380

1 Q. I'm not trying --

2 A. I don't know what kind of specific answer you want
3 from that.

4 Q. I'm not --

5 A. What rule? I --

6 Q. As always, I just want you to give me what you
7 best recall and most accurately and truthfully recall. I'm
8 not trying to extract from you any particular answer. I am
9 now only asking you, did your school have rules or a rule
10 that involved gym class that you felt had a safety purpose?

11 A. I don't know.

12 Q. But you believed at the time that you were smoking
13 in high school that the school's rule about smoking had no
14 safety purpose?

15 A. I have no idea about their safety purposes. I was
16 just a student.

17 Q. Now, you mentioned in answering a question or
18 questions by your lawyer, that there was a junior high
19 school gym teacher that some time later on asked you
20 whether you were still smoking?

21 A. Yes.

22 Q. Who was that?

23 A. I believe her name was Mrs. Mulee.

24 Q. Do you know how to spell her last name?

25 A. No.

00381

1 Q. It's "Mulee," is what you are saying?

2 A. Yes.

3 Q. Did she teach any sources besides gym?

4 A. I have no idea.

5 Q. Had she been your gym teacher?

6 A. Yes.

7 Q. When did she make this statement or ask you this
8 question?

9 A. It was some time when I was in high school. I
10 couldn't tell you when. I just had gone and saw her at the
11 junior high campus one day.

12 Q. Did you go by just to see her, or you just went by
13 and you happened to bump into her?

14 A. I just happened to bump into her that day.

15 Q. In answering your lawyer's question, did you mean
16 to indicate that this gym teacher in junior high had known,
17 while you were in junior high, that you were smoking?

18 A. I assume. I don't remember the circumstances.
19 Honestly, I do not remember the circumstances.

20 Q. And what was it that she asked you, and what was

21 it that you said? Can you give me, as best you can recall,
22 the whole conversation with this gym teacher?

23 A. I only remember that she asked me that -- if I was
24 smoking, I believe was the question.

25 Q. And then you said?

00382

1 A. Yes.

2 Q. And then what was said?

3 A. And she told me it was effect -- slow me down in
4 my running.

5 Q. Did you ask her why she felt that way?

6 A. No.

7 Q. Did she tell you why she felt that way?

8 A. Not that I recall.

9 Q. You did not believe her, though?

10 A. I don't remember what kind of opinion I had at the
11 time.

12 Q. Is there any reason why you would not have
13 believed her at the time?

14 A. I don't know.

15 Q. You mentioned that by the time you were 15 you
16 were smoking in your home, and in ways that your parents
17 would know about it, in other words, in front of them?

18 A. I -- I -- guesstimated that, yes. It was a
19 gradual thing. I can't tell you exactly, you know, when
20 was the first time that -- that my parents actually knew I
21 was smoking. I can't pin down an exact time for that.

22 Q. Okay. But your best estimate was 15, is what you
23 said earlier?

24 A. Approximately, yes.

25 Q. Can you say whether you recall it during a certain

00383

1 year in school? In other words, can you remember it was
2 during your sophomore year, for example?

3 A. All I can say is -- this I know for sure, my mom
4 knew I was smoking the day I got busted at school for
5 smoking. Is that -- that is a certainty there.

6 Q. That's when the Dean of Girls caught you?

7 A. Yes.

8 Q. Before that time, you had been successful smoking
9 in not being caught by teachers?

10 A. I suppose.

11 Q. And you had done that in junior high, as well as
12 high school?

13 A. Yes.

14 Q. And where had you gone to smoke in junior high so
15 that you could not be caught?

16 A. With the other kids in the bathroom.

17 Q. Any other place?

18 A. Off campus.

19 Q. Any other place on campus?

20 A. No, not that I recall.

21 Q. What about high school, where had you gone there
22 on campus to avoid being caught by teachers while you
23 smoked?

24 A. We smoked in the bathroom, some time out on the
25 lawn. And it was an open campus, so we would go off

00384

1 campus.

2 Q. Who was the Dean of Girls that caught you?

3 A. Suzanna Arsi -- Susan Arsi.

4 Q. Do you know how to spell her last name?

5 A. A-R-S-I, I guess.

6 Q. When you were in suspension hall for those three
7 days following the time that you were caught, how did you
8 occupy yourself?

9 A. Played paper football.

10 Q. Anything else?

11 A. Did -- I suppose did school work. I -- I don't
12 remember specifically what I did.

13 Q. Did you see the movie The Breakfast Club?

14 A. Not that I know of.

15 Q. I don't mean while you were suspended. Have you
16 ever seen that movie?

17 A. I don't think so.

18 Q. About kids who were being punished for one thing
19 or another and all sent to sort of a study hall on a
20 Saturday?

21 A. I never saw that movie.

22 Q. Now, when you began, whenever it was exactly,
23 smoking in your home, would you do that in front of your
24 father, also?

25 A. I stayed in my room pretty much or -- or was

00385

1 outside. I didn't -- it wasn't a through-the-house-thing.

2 Q. Did your father know, as your mother knew, that
3 you were smoking?

4 A. I could not tell -- I can't honestly tell you -- I
5 don't think -- I think he knew. I mean, I -- I don't know.

6 Q. Did you try to refrain from smoking in front of
7 one or both of your parents?

8 A. I don't remember.

9 Q. What about your brothers and sisters, would you
10 smoke in front of them?

11 A. I suppose.

12 Q. By the time you entered what was the compressed
13 junior and senior year of high school, had you by that time
14 been in a situation where there was another person who
15 started smoking for the first time? And setting Kim aside
16 for the moment.

17 A. I don't know. I -- I couldn't answer that
18 truthfully.

19 Q. Had you ever been the person to try to suggest to
20 some person, who had not smoked, that they ought to try it?
21 In other words, do what Gloria did for you?

22 A. I don't know. And I -- I can't even say that it's
23 her fault that I smoked. It's -- you know, she just
24 supplied the cigarette that day. You make it sound like
25 she made me do it.

00386

1 I don't recall ever enticing anybody to smoke, if
2 that's the point you are trying to make.

3 Q. Had you ever been the person to provide a
4 cigarette to one who had not smoked before?

5 A. I don't know that. I can't say "yes" or "no" on
6 that, honestly.

7 Q. In order to be able to compress your junior and
8 senior year together, did you have to have permission from
9 your parents to do that?

10 A. I -- you know, I don't -- I don't remember that,
11 whether they had to sign anything or not. I have no idea.

12 Q. How were you able to arrange this, or how was it
13 arranged for you by the school people?

14 A. What do you mean "arranged"?

15 Q. Well, I'm not sure how your school worked. I can
16 only give you an example.

17 When I was in high school, you pretty much had
18 classes assigned to you, a few you could maybe select, but
19 it wasn't like college where you could take double the
20 units or something, at least that I knew about. Maybe I
21 was uninformed.

22 So I am trying to figure out, were you able to do
23 it just like on a college system, just take a lot of units
24 without asking anybody, or did you ask somebody if you
25 could do this, or did somebody come to you and suggest that
00387

1 you do it because you were doing so well? Or how did it
2 come about? That's all I am trying to get at.

3 A. It was my idea.

4 Q. Okay. So did you just do it without talking to
5 anybody, or did you have to ask permission from some school
6 people?

7 A. Well, of course, I had to have the school's
8 permission.

9 Q. See, I wasn't there. I don't know. That's what I
10 am trying to find out.

11 A. Yes.

12 Q. So did you do this before your junior year was to
13 start, or did you do it --

14 A. I don't remember.

15 Q. -- as it started?

16 A. I don't remember exactly when the idea came. I
17 just -- I wanted out of school. And -- and I was able to
18 go to summer school. I also took my classes I was supposed
19 to.

20 Q. Why was it that you wanted out of school?

21 A. Because I wanted out of school. I -- all kids
22 want out of school. You want to graduate.

23 Q. Why did you want to -- why did you want out of
24 school a year earlier than would have been your normal
25 graduation year?

00388

1 A. Because I wanted to complete high school and --
2 and there was a way to do it, as my niece just did the same
3 thing as --

4 Q. Can you be as specific as you can be as to why it
5 was that you wanted to complete high school a year early,
6 why you wanted to get out of school a year early?

7 A. Get out? I wanted to graduate, and I had planned
8 on going to college, but it just never transpired.

9 Other than that, everybody wants to get over with
10 high school. You get tired of going to school after
11 awhile. You know, you look forward to that break.

12 Q. When you went to summer school, was that the
13 summer before you started your junior year or after what
14 would have been your junior year that became your combined
15 year or was it both?

16 A. You know, I -- I don't remember if it was between
17 junior or senior or, you know, the first and last. I'm not
18 quite sure what year that was.

19 Q. You mentioned you were taking college preparatory
20 courses.

21 A. Some.

22 Q. Was it your intent to go on to the junior college
23 in Ventura?

24 A. I hadn't made -- made any -- any definite plans.
25 I just had an idea of what I wanted to do.

00389

1 I was 16, you know. That's not a mature age. So

2 I can't tell you I was making adult decisions, you know
3 what I mean, for my whole future at that time. I --
4 16-year olds pretty -- generally think pretty close to the
5 time they are at.

6 Q. I am just trying to find out to what extent you
7 had at that time, any firm plans and what they were.

8 A. I just -- what I wanted to do is -- was -- was to
9 go on to school at some point there, but I didn't have any
10 definite plans.

11 MR. BARRON: This is a good place to stop for me,
12 and for us for lunch. I think it's about 12:30, maybe a
13 little after. And if that's all right for --

14 MS. CHABER: Yes.

15 VIDEO OPERATOR: Going off the record. The time
16 is 12:35.

17 (Whereupon, the noon recess was taken
18 from 12:35 to 1:41.)

19 VIDEO OPERATOR: We are back on the record. The
20 time is 1:41.

21 MR. BARRON: Q. Are you all right to proceed?

22 A. Yes.

23 Q. And again, just let us know if you need a break or
24 you need to quit because you are not giving your best or
25 most accurate answers, because of either physical or mental
00390

1 state. Okay?

2 A. Okay.

3 Q. I think when we broke for lunch, we were talking
4 about the fact that you had been able to combine or
5 compress your junior and senior year together to graduate a
6 year earlier at age 16 and a half than you ordinarily would
7 have, is that correct?

8 A. Yes.

9 Q. And you did that by going to a summer school or
10 summer schools, among other things, correct?

11 A. Yes.

12 Q. Did you go to school earlier in the day or leave
13 later in the day, or take more courses during the regular
14 school year than you ordinarily would have, had you decided
15 to graduate with your class a year later?

16 A. I'm not sure of that. I just took the required
17 courses that the -- they told me that I needed to take.
18 Whether that was any more or less, or whether I was in
19 school any longer or shorter, I couldn't tell you.

20 Q. As part of your effort to take a college prep
21 curriculum, college --

22 A. It wasn't all college prep, just some classes
23 were.

24 Q. No. I wasn't meaning that all classes were. I
25 just -- I thought when you say that you were trying to take
00391

1 a college prep qualifying program -- did I misunderstand?

2 A. Yeah. I just took a couple classes that they said
3 were college prep courses.

4 Q. Okay. In any event, that was just a lead in to, I
5 wanted to find out if in school you took any courses in
6 chemistry.

7 A. No chemistry.

8 Q. Or biology?

9 A. No biology.

10 Q. Or any sciences?

11 A. I think it was an earth science class.

12 Q. Did you take a course -- and schools have

13 different names for it, but kind of a general course about
14 how to get along as you become an adult, that includes any
15 teaching of health-related matters?

16 A. I don't know if I took a -- a class that
17 specifically was for adult health matters. I don't
18 remember that.

19 Q. Or that included health matters, whether they be
20 directed towards adults or not adults?

21 A. Some time or another I could have. I -- I -- I
22 don't know exactly the classes I took right now.

23 Q. Before you graduated from high school in 1976, had
24 you tried chewing tobacco?

25 A. No.

00392

1 Q. When was it that you first tried chewing tobacco?

2 A. I can't say exactly when it was. It wasn't -- it
3 was a recreational thing.

4 Q. What do you mean by that?

5 A. Spitting on ants. It was to see who could shot --
6 shoot on ants with their spit that -- it had nothing to do
7 with anything else. A kid thing. I mean, it was a
8 silly -- just a silly thing to do.

9 Q. But as I understand it from your earlier answer,
10 you did this some time after you finished high school?

11 A. I'm -- I'm pretty sure it was.

12 Q. What is your best recollection as to when it was
13 that you took up this recreational activity?

14 A. Actually, I didn't take it up. It -- I just
15 remember that incident of spitting on ants that time. It
16 wasn't something I did all the time as a recreational
17 activity.

18 Q. Okay. Are you saying you only chewed tobacco one
19 time?

20 A. No. It's -- that was every now and then, you
21 know, (indicating) put a little thing in my -- my brother
22 Kenny chewed tobacco, and every now and then I'd just try
23 it and spit and "yuck."

24 Q. On how many occasions in your whole life do you
25 think it was that you did what you just described?

00393

1 A. I would say as a fair -- as a fair guess, not over
2 30 times.

3 Q. And over what time period, meaning was it just
4 over 30 days, or was it over a few months, or over a few
5 years or what?

6 A. Probably over a few years. You know, off and on
7 over the years.

8 Q. Can you tell me in what years that took place?

9 A. '80s. And that's a guess.

10 Q. And on each of the occasions, whether it was 30 or
11 some other number, was it always associated with the
12 activity of, as you call it, recreational activity of
13 spitting on ants?

14 A. No, no. Sometimes it was just because for the
15 heck of it, because it was different.

16 Q. In fact, did you do it on more occasions where you
17 were not the spitting on ants?

18 A. Yes. That was the first time I remember was --
19 was spitting on the ants.

20 Q. Was this the only time that you used the chewing
21 tobacco and spat on ants, was the first time, or did you --

22 A. Probably. Yeah. I'm not weird.

23 Q. Then can you tell me what activities, or in what

24 situations the other occasions took place where you were
25 using the chewing tobacco as you've described?

00394

1 A. Just here and there, whenever I was around
2 somebody who had it, because it wasn't something that you
3 purchased and it wasn't my thing.

4 Q. At whose suggestion or -- yours or Kenny's or
5 someone else, did you first try chewing tobacco?

6 A. I -- it was my own decision, I guess, since I put
7 it -- I mean, it wasn't -- I don't know. Nobody -- I don't
8 know what -- what are you saying, somebody told me to do
9 it? Nobody told me to do it.

10 Q. Or suggested that you do it?

11 A. I don't remember if there was -- I don't remember
12 if I asked on my own or if somebody offered, if it matters.

13 Q. Why did you do it the first time?

14 A. We were playing around.

15 Q. Why did you do it the other times after the first
16 time?

17 A. I -- I don't know. I can't tell you exactly why.

18 Q. Were there any things that you believe now
19 influenced you to use chewing tobacco, as you've described
20 you did?

21 A. No, not in particular.

22 Q. Were there any advertisements on television or
23 radio that you had seen involving chewing tobacco that in
24 any way -- well, let's stop right there. This you had
25 seen, first of all?

00395

1 A. I don't know.

2 Q. And so certainly you -- I don't know that -- any
3 such TV or radio commercials were an influence for you
4 deciding to chew tobacco when you did, is that true?

5 A. I don't think so. I don't know. Don't recall
6 any -- I mean, it was -- chewing tobacco was not an
7 important thing to me, so I can't tell you what influenced
8 me or not. It was ...

9 Q. What about print advertisements for chewing
10 tobacco, be they in newspapers, magazines, billboards, or
11 wherever else, did you see any such before you chewed
12 tobacco for the first time or before you continued chewing
13 tobacco on any of those occasions that you did?

14 A. I may have, Skoal. I may have seen ads, but I
15 couldn't be particular and say, yes, I saw them before
16 or -- or after, because I know that they do advertise
17 chewing tobacco, so I can't say I haven't seen one.

18 Q. You -- you think you may have seen one, but you
19 are not sure whether you saw any such before you used
20 chewing tobacco yourself or not, is that what you are
21 saying?

22 A. Right. I don't remember anything in particular.

23 Q. What about any celebrities, be they in movies or
24 radio, or models or sports figures, any such that you
25 believe were one of the influences, if any, that made you

00396

1 try chewing tobacco and use it on the times you did
2 thereafter?

3 A. The only thing I can think of is Clint Eastwood
4 spitting on a dog's head.

5 Q. Was that in a movie?

6 A. Yes.

7 Q. And that was something that may have been an
8 influence, that was one of the reasons why you decided to

9 try chewing tobacco?

10 A. No. You just asked me if I had seen anything
11 about a celebrity, and I told you that I just know he's
12 always chewing tobacco in his movies. It --

13 Q. I am trying to now find out what effect if any
14 that had on you, what influence if any it had on you. Was
15 it positive, negative or neither?

16 A. I -- I couldn't say. I have no opinion on it, I
17 guess.

18 Q. Were you in any way trying to indicate that his
19 spitting on the head of the dog made you think of spitting
20 on ants?

21 A. No, no, no. No.

22 Q. At the time that you used chewing tobacco on any
23 of those occasions that you did, did you have any knowledge
24 or any understanding that the use of chewing tobacco had
25 associated with it, any risks to one's health?

00397

1 A. Not that I'm aware of.

2 Q. Is that still what is your state of mind today?

3 A. Now, I know a lot more.

4 Q. And now you know it does, in your mind, have some
5 risks associated with it, chewing tobacco?

6 A. Yes.

7 Q. And you first learned that also after you were
8 diagnosed with lung cancer?

9 A. I don't -- I don't know. I just -- you just asked
10 me a question now --

11 Q. Right.

12 A. -- what I think now.

13 Q. Right. And now I am trying to tie it down as to
14 when you learned that, whether it was before or after you
15 were diagnosed with lung cancer.

16 A. I don't know when I learned that.

17 Q. Now, up until the time that you graduated from
18 school in 1976, had you tried alcohol again after that
19 circumstance that you described earlier today involving the
20 malt liquor?

21 A. Yes.

22 Q. And how many times had you done that without, in
23 effect, your parents' permission?

24 A. I don't know.

25 Q. Can you give me your best estimate?

00398

1 A. No, I can't. I can't even estimate, because I --
2 I wasn't a partier, whatever you want to call it. I don't
3 know what that has to do with smoking, anyway.

4 Q. Let's see if we can try to get some idea, though,
5 of the number of times. And are you talking about, it
6 could have been, and you believe likely was, say, less than
7 five, or do you believe it was more likely more than five
8 times that this happened?

9 A. That what happened?

10 MS. CHABER: What happened?

11 MR. BARRON: Q. That you used alcohol, consumed
12 it without your parents' knowledge after the malt liquor
13 incident and before you graduated from high school.

14 A. I have no idea of any time I consumed alcohol
15 without my parents' knowledge.

16 Q. While you were in high school.

17 A. While I was in high school. I don't know. I
18 don't know.

19 Q. You have no recollection of ever doing it again,

20 other than the first time with malt liquor until the time
21 you graduated from high school, that is, drinking
22 without --

23 A. I did not say I did not drink with -- alcohol. I
24 said without my parents' knowledge.

25 Q. I know. I was going to add that to my question,
00399

1 which wasn't completed. Let me make sure we get it out
2 totally.

3 What you are saying is you have absolutely no
4 recollection of ever using or consuming alcohol without
5 your parents' knowledge up until the time you graduated
6 from high school, except that one time you've already
7 described involving malt liquor, is that what you are
8 saying?

9 A. I -- I don't recall. I --

10 Q. Now, with your parents' permission, did you
11 consume alcohol?

12 A. Occasionally, yes.

13 Q. And can you describe what you mean by that?

14 A. Under her supervision. I drank at home. Not --
15 you know --

16 Q. I'm not sure I know, but I am going to ask.

17 What was it that you were allowed to drink at
18 home?

19 A. She would let me drink screwdrivers, like on a
20 Friday night. It would be little -- little half-pint.

21 Q. And you were limited to one, or could you have
22 more than one?

23 A. I don't remember, but it wasn't -- I -- it was no
24 big deal, I don't think.

25 Q. How frequently would this happen, that you'd be
00400

1 allowed to have that kind of a drink that you mentioned?

2 A. Not often. Not often at all. Graduation night at
3 home, stuff -- you know, stuff like that. It wasn't -- I
4 don't know where you are trying to go with this, but I --
5 it wasn't something I did all the time.

6 Q. Was it always associated with a significant event
7 like graduation, or was it just sometimes that it was a
8 Friday night?

9 MS. CHABER: I am going to object. I think that
10 this is getting really irrelevant, remote, not calculated
11 to lead to the discovery of admissible evidence and an
12 invasion of privacy.

13 MR. BARRON: I could respond --

14 JUSTICE DOSSE: Go ahead.

15 MR. BARRON: -- if your Honor would like.

16 JUSTICE DOSSE: Yeah. I would like that.

17 MR. BARRON: We are dealing with a case in which
18 there's been a claim of no knowledge of risks associated
19 with a defendant's product, and we also are dealing with a
20 question of use of a product before it is legal to purchase
21 and use, meaning an under age person.

22 And so the state of mind of the plaintiff, as well
23 as those around her, seems to me to be relevant on those
24 issues, and we have not yet had the opportunity, of course,
25 to examine the parents on this kind of an issue. And this
00401

1 is discovery, it's not being offered at this point as
2 evidence at trial.

3 JUSTICE DOSSE: If you are going to get to the
4 frequency of use during this period, during high school,

5 I'd suggest you do it directly and --
6 MR. BARRON: I will try. That's what I thought --
7 JUSTICE DOSSE: Rephrase the question, if you
8 would.

9 As to the other -- the other -- the reminder of
10 the objection, at this point would be overruled.

11 MS. CHABER: Okay. And I would, you know --
12 obviously I've let it go a long time before I've raised
13 that, and I would ask the Court -- I assume that's without
14 prejudice to further questioning and reraising it and --

15 JUSTICE DOSSE: Exactly.

16 MS. CHABER: -- raising issues.

17 JUSTICE DOSSE: You can -- there won't be a
18 continuing objection, but if you feel that you want to
19 object again, feel free to do that.

20 MS. CHABER: Okay. Thank you.

21 MR. BARRON: Q. I would like to have you tell me
22 what the frequency was when your mother would allow to you
23 have these screwdriver drinks.

24 A. I can't honestly tell you. It was not on a
25 regular basis, and it could have been any time when the
00402

1 family got together for, you know, family get-togethers
2 or -- or when -- whenever.

3 It wasn't on a -- every Friday night. It wasn't
4 every Friday night. It was every now and then. That's as
5 best as I can answer.

6 Q. How old were you? Or another way of trying to
7 find out is, in what grade were you when this first
8 happened, that your mother allowed you to have the kind of
9 drink that you mentioned?

10 A. A screwdriver? I -- I don't know. Probably
11 the -- the last year of school, I would imagine. And
12 I am guessing at that.

13 Q. Now, you married soon after graduation, is that
14 correct?

15 A. Yes.

16 Q. And you married whom and on what date?

17 A. Dean Moore. I believe it was in June of '76. Am
18 I right?

19 Q. And -- and by the time of your graduation and soon
20 thereafter, your marriage to Mr. Moore, you were still
21 smoking?

22 A. Yes.

23 Q. And by the time of your graduation, had you ever
24 had a plan that you were going to smoke for only a certain
25 period of time, you were going to quit at a certain age, or
00403

1 anything like that?

2 A. A plan?

3 Q. Yes.

4 A. No.

5 Q. Or an idea, a serious consideration, anything, or
6 were you just sort of taking things as they came?

7 A. I don't know. I -- I didn't spend my future
8 thinking about a plan for cigarettes.

9 Q. Okay.

10 A. I had no plan.

11 Q. So when you married Dean Moore in June of 1996, he
12 was already himself a smoker, as I understand it?

13 A. Yes.

14 Q. And he was smoking Marlboros at that time?

15 A. I believe so.

16 Q. Did he remain a Marlboro smoker for as long as you
17 and Mr. Moore were together?

18 A. I believe so.

19 Q. And when were you and he no longer together? I
20 don't mean the technical formal, final dissolution of
21 marriage papers; but from your standpoint, when did you
22 split?

23 A. I -- I think, from remembering, it was two or
24 three years later. I'm really bad at ...

25 Q. Was there ever a period, while you and Mr. Moore
00404

1 were still together, that he made what you thought was a
2 serious attempt to quit smoking?

3 A. A serious attempt?

4 Q. Yes.

5 A. Not that I remember.

6 Q. Did he ever say, while you and he were still
7 together during those two or three years, that he was
8 making what he thought was a serious attempt, even if you,
9 for example, didn't think it was serious?

10 A. He made a suggestion to quit smoking at one time.

11 Q. But didn't follow up, as you saw it, in what you
12 would consider to be a serious way, is that right?

13 A. No.

14 Q. What I said was correct?

15 A. I think so.

16 Q. And was that true for you also, that during those
17 years you also did not make what you thought was a serious
18 attempt to quit?

19 A. Not that I remember.

20 Q. And bear with me for a minute, if you will. I am
21 trying to locate that amended answer to the written
22 questions so I can try to make sure that we understand the
23 timing as reflected here in the cigarette brands smoked.

24 This amended answer to question number 3 of the
25 written questions, the first set of those that were sent --
00405

1 MS. CHABER: I think that's 23, Counsel.

2 MR. BARRON: You think what?

3 MS. CHABER: Isn't it number 23?

4 MR. BARRON: Did I misspeak? I thought you said
23.

6 MS. CHABER: I thought you said 3, but maybe I
7 didn't hear it.

8 MR. BARRON: Let me start over and make sure we
9 are clear, then.

10 Q. In the amended answer to question number 23 of the
11 first set of questions, it has here in the answer under
12 paragraph E, the statement that quote, approximately 1980,
13 question mark, through approximately 1984, question mark,
14 Camel Lights.

15 Is there any association between when you and Mr.
16 Moore split and when you started to smoke Camel Lights?

17 A. Estimation?

18 Q. In time.

19 A. I started smoking Camel Lights when I was with
20 Wesley Imhoff, not Dean Moore.

21 Q. Okay. And you were with Wesley after you and Dean
22 Moore, Mr. Moore, had split and gone your separate ways?

23 A. Yes. I had smoked Marlboros with -- with Dean
24 when I was married with him. That's -- that was what this
25 was.
00406

1 Q. Now, written answers that were provided indicate
2 that you married Mr. Imhoff on August 9, 1990. Does that
3 sound about right?

4 A. Yes.

5 Q. And Mr. Imhoff, was he a smoker?

6 A. Yes.

7 Q. And what brand of cigarettes did he smoke at that
8 time?

9 A. I believe Winstons.

10 Q. And so long as you and he were together, did his
11 brand remain the same, meaning Winston?

12 A. He also smoked Salem or Kool, or something like
13 that.

14 Q. Along with the Winstons, or in substitute --
15 substitution for them for a period?

16 A. I don't know. Whenever his whim filled him. I --

17 Q. And when was it that you and Mr. Imhoff split
18 ways? Again, not formal resolution by divorce and Court
19 Order, but --

20 A. I don't --

21 Q. -- from your standpoint went your separate ways?

22 A. I don't know. One or two years. It was an off
23 and on thing.

24 Q. During that time that you and he were together
25 before you went your separate ways, did Mr. Imhoff ever

00407

1 make what you thought was a serious attempt to quit
2 smoking?

3 A. No.

4 Q. Did he ever say to you that he was making an
5 attempt which he thought was serious to quit smoking?

6 A. No.

7 Q. During that same period that you and Mr. Imhoff
8 were together before you and he went your separate ways,
9 did you make what you thought was a serious attempt to quit
10 smoking?

11 A. No, not that I remember.

12 Q. Now, to try to keep these things in context in
13 terms of when they happened, in terms of time, you
14 mentioned in answer, I think to some questions your lawyer
15 asked you, that although you weren't, as you called it, a
16 star athlete, you did like to run.

17 A. Yes.

18 Q. And was there a time when you not only just liked
19 to run, you tended to be involved with it or tried to run
20 with some frequency?

21 A. Mostly just in junior high school.

22 Q. And so you -- you stopped being in any way a
23 serious or semiserious runner, even, after you left junior
24 high school?

25 A. Right. I was not a serious runner.

00408

1 Q. I am looking at my notes and your answers to try
2 to get us in the right time period for the next series of
3 questions.

4 When you and Mr. Imhoff split and went your
5 separate ways, to where did you go to live?

6 A. My mother's house.

7 Q. And for how long did you remain there?

8 A. Oh, I don't know. Off and on, because I -- I
9 lived in a few different places.

10 Q. And by your "mother's house," could you be
11 specific, in terms of city and address?

12 A. 946 Devereaux, Ojai, California.
13 Q. The same one you had lived in while you were in
14 high school?
15 A. Yes.
16 Q. And for how long did you treat that as, in
17 essence, kind of your home base for living?
18 A. Until I married -- until me and Leonard got
19 together, my present husband.
20 Q. Okay.
21 A. I used that as a permanent address.
22 Q. And that was, when, that you and your present
23 husband married?
24 A. When we lived together or when we first got
25 together, yes.

00409

1 Q. Okay. I'm trying to find a date only.
2 A. It was in '83 or -4, I believe, that -- '83.
3 Q. So if I am keeping track of dates right, and I
4 don't want to confuse you on dates, and if you can't answer
5 this just tell me you can't -- there wasn't really a long
6 period after you and Wesley went your separate ways, Wesley
7 Imhoff, and when you hooked up with your present husband?
8 A. "Hooked up"?
9 Q. I don't mean that in a derogatory way. Got
10 together with.
11 A. Right. The -- you mean when -- when I wasn't with
12 Wesley, when we divorced or I -- I don't know what you
13 mean, because --
14 Q. It's all right. I can reconstruct it from the
15 dates that I have in the answers to the written questions.
16 I am just trying to keep things in chronological order, if
17 I can.
18 A. Okay.
19 Q. I was just trying to establish that you and
20 Mr. Imhoff didn't split, and then you lived with your
21 mother for ten years before you started --
22 A. No, I -- no. I didn't live with her for ten
23 years.
24 Q. It was a relatively brief period, is what I am
25 saying?

00410

1 A. I -- I -- in between Wesley and Leonard, I did
2 have a life in between there, if that's what you are
3 getting at. I -- I'm not sure what kind of answer you want
4 there.
5 Q. I really don't want any answer. I am just trying
6 to establish the timing of things so it would make sense.
7 A. But I used my mother's address as a permanent
8 address. I think that's the kind of answer you wanted.
9 Q. And again, to help me out, the date of marriage to
10 your present husband, Leonard, was when?
11 A. May 3rd, 1986.
12 Q. Whenever it was that you and your present husband,
13 Leonard, became devoted to spending total time with each
14 other as opposed to spending time with other people of the
15 other sex --
16 A. That was 1983.
17 Q. -- in relationship, whenever that was.
18 A. 1983.
19 Q. At that time, was Leonard a smoker?
20 A. Yes.
21 Q. And what was Leonard smoking as a brand?
22 A. Marlboros.

23 Q. And did Leonard remain a Marlboro smoker from the
24 time that we are talking about, all the way up to the
25 present?

00411

1 A. Last year.

2 Q. Last year he quit?

3 A. Of February.

4 He also smoked Camels so he could collect the
5 Camel bucks. That is when they started doing -- the Camel
6 cash is when he would also purchase -- if there was
7 something he wanted, he would choose to purchase Camels,
8 depending on his whim at the time for Marlboro milds or
9 Camel cash.

10 Q. Now, between the time that you and Leonard got
11 together and the time that you and he married, did Leonard
12 ever make, during that time, what you thought was a serious
13 attempt to quit smoking?

14 A. Be -- excuse me. Between what time?

15 MS. CHABER: '83 and '86, when you got married.

16 THE WITNESS: I don't think so.

17 MR. BARRON: Q. Did he ever say to you that he
18 was making what he thought was a serious attempt?

19 A. Not that I remember.

20 Q. And you did not at that time make a serious
21 attempt, is that correct?

22 A. Correct.

23 Q. After you and he got married on May 3rd, 1986 --

24 A. '8 -- yes.

25 Q. You scared me there.

00412

1 A. You are getting me mixed up. You were talking
2 about '83. Okay. '86. Yes.

3 Q. Okay. Between your marriage -- between the time
4 of your marriage to Leonard on May 3rd, 1986, and up to
5 that time that you said was in 1988 where you made this
6 serious attempt one time that lasted about two weeks, had
7 you made any other, what -- nonserious or insignificant
8 attempts to quit?

9 A. Insignificant, yes, I would say.

10 Q. Okay. What do you mean by "insignificant"?

11 A. Saying I would try not to smoke. This is when I
12 was pregnant with my first child, and thinking I wouldn't
13 smoke; but within the hour I would be smoking. I would say
14 that's insignificant.

15 Q. Now, when did you become pregnant with your first
16 child?

17 A. In 1988, I believe. I -- I can't tell you the
18 exact moment.

19 Q. Obviously -- before?

20 A. Excuse me. I would be pregnant -- he was born in
21 '88 of January, so I was pregnant in '87. I think
22 that's -- if I did my math right.

23 MS. CHABER: Wasn't he born in January of '89?

24 THE WITNESS: Oh. I'm sorry. Now I am making him
25 older.

00413

1 MS. CHABER: He's ten?

2 THE WITNESS: Yes.

3 MS. CHABER: Okay.

4 THE WITNESS: Okay. I was pregnant in 1988. I'm
5 sorry.

6 MR. BARRON: Q. So this is what I am trying to
7 get clear, if I can. Did you make this first serious

8 attempt to quit smoking, the one that lasted about two
9 weeks, before or after you realized that you were pregnant
10 with your first child?

11 A. After.

12 Q. Before or after the birth of your first child?

13 A. It was after the birth.

14 MS. CHABER: She had testified '89, Counsel,
15 actually, yesterday or the day before, whenever that was on
16 the quit attempt.

17 MR. BARRON: We may have a couple dates in the
18 record, this may be why.

19 THE WITNESS: Oh, why -- try having brain
20 radiation. It kind of has an effect on your thinking
21 process.

22 MR. BARRON: Q. And that's why I'm trying to use
23 events here, and in many other cases I have tried to use
24 events with you as opposed to raw dates --

25 A. Right.

00414

1 Q. -- or years, and then we try to tie it back to
2 years, based on what we have here.

3 A. And I am trying to be right.

4 Q. So the first serious attempt was some time after
5 the birth of your first child?

6 A. Yes.

7 Q. Which was Troy?

8 A. Yes.

9 Q. And the second serious attempt was the one you
10 made after being diagnosed with lung cancer that -- excuse
11 me -- the second attempt that you made was after the
12 question of chronic bronchitis came up?

13 A. Yes.

14 Q. And you were ultimately successful with that
15 attempt, correct?

16 A. Yes.

17 Q. Now, was it before the birth of your first child,
18 Troy, that you came across this literature or article that
19 talked about cigarettes, or smoking as being involved
20 with -- or potentially involved with low birth weight?

21 A. It could been while I was pregnant or after the
22 birth. I just -- it was in a baby magazine, if I remember
23 correctly, that that's where I read about it.

24 Q. Well, earlier, I think in answer to your lawyer's
25 questions, I think even later on, you talked about it being

00415

1 before the birth because you had some idea that -- and you
2 used the word -- "thank God," because you were going to
3 have a smaller baby?

4 A. Well, I didn't know I was going to have a smaller
5 baby.

6 Q. But that was --

7 A. I was just saying it was while I was pregnant or
8 after he was born, because that's when I started getting
9 the baby magazines.

10 Q. Now, did you have a doctor that helped you with
11 your pregnancy of your first child?

12 A. Yes.

13 Q. And what was his or her name?

14 A. Dr. Jeffrey Richardson.

15 Q. And did he help you with the birth of any other
16 children?

17 A. Yes.

18 Q. Was he a doctor that you picked for yourself?

19 A. He was recommended to me, yes.
20 Q. And you liked him well enough that you stayed with
21 him for your other children?
22 A. Yes.
23 Q. Was he a doctor that you felt comfortable with?
24 A. Yes.
25 Q. A doctor that you felt that you could ask a
00416
1 question of if you had one, about your pregnancy or your
2 anticipated delivery?
3 A. Yes.
4 Q. Did you ever ask him what significance, if any,
5 low birth weight might have, when it was being reported
6 that low birth weight could be the result of smoking during
7 pregnancy?
8 A. No.
9 Q. Did you tell Dr. Richardson, during your pregnancy
10 with what turned out to be Troy, that you were a smoker?
11 A. Not to his face, no.
12 Q. To whom did you tell this to?
13 A. Only on the paperwork I filled out.
14 Q. And what do you remember saying on the paperwork?
15 A. That I smoked.
16 Q. Anything else? For example, did it ask you how
17 much you smoked or for how long?
18 A. It may have. I don't recall the specifics.
19 Q. Did he, or anybody at his office, ever say
20 anything to you, or suggest anything to you about whether
21 it would be a good idea or a bad idea to continue smoking
22 during your pregnancy?
23 A. No.
24 Q. Any pregnancies?
25 A. No.
00417
1 Q. Did Dr. Richardson, or anybody else associated
2 with his office, give you any material, like pamphlets or
3 literature or articles or telephone hotline, or anything,
4 that you know had any information about whether smoking was
5 a good idea for someone who was pregnant or not?
6 A. Not that I'm aware of. They may have had
7 literature sitting in the office or something, but nobody
8 ever handed me -- not that I remember.
9 Q. And if they had literature in the office, you did
10 not read the literature?
11 A. I don't remember.
12 Q. Do you remember seeing literature in the office?
13 A. Literature? I --
14 Q. Well, here's what I mean. I don't mean to get
15 hung up on a --
16 A. In particular, no. In something particular, no.
17 Q. Okay. Well, not something particular yet.
18 I don't want to have there be any confusion
19 because of a word that we happen to pick.
20 Let me just tell you what I am talking about.
21 There are doctors who have offices, that when you walk in,
22 they have visible for people who walk in, things that have
23 to do with people or their health or diseases, information
24 pamphlet-type things.
25 My question is: Did your Dr. Richardson ever have
00418
1 any of that available in his office anywhere for patients?
2 A. I imagine he does.
3 Q. Why do you imagine that?

4 A. Well, because you just told me doctors have it in
5 their office.

6 MS. CHABER: Okay. Well, don't make assumptions.

7 MR. BARRON: No.

8 MS. CHABER: And don't speculate about things.

9 MR. BARRON: Q. I don't want you to assume, and
10 I don't know Dr. Richardson --

11 A. I'm --

12 Q. I'm not saying all doctors do; but you were there
13 for four children, and I assume you went a couple times at
14 least with each child to go see Dr. Richardson before
15 delivery.

16 A. I'm sure he had pamphlets, but I didn't go in
17 there and pick them up and read them. When I went in, I
18 would pick up a magazine.

19 Q. Did you go anywhere else to try to inform yourself
20 about what things might be good or what things might be
21 harmful for either you, as the expectant mother, or for
22 your child during the pregnancy?

23 A. What do you mean by "go anywhere else"?

24 Q. Go to a magazine shelf and pick out a magazine
25 that had an article about pregnancy and what kinds of
00419

1 health things would be good for people, and what kind of
2 health things would be bad for people, be they mother or
3 child; go to the library, do anything like that at all?

4 A. No, not that I recall doing anything specific.

5 Q. Did you inquire of anybody, ask anybody besides
6 Dr. Richardson and his office people, if they had an idea
7 what might be good for you as the expectant mother or good
8 for your child that you were carrying before the delivery
9 of any of your children?

10 A. Not that I can think of.

11 Q. Or ask what might be harmful to you as the mother
12 or harmful to the child potentially?

13 A. Not -- not that I can think of.

14 Q. Now, was Troy, your oldest child, delivered by
15 C-section?

16 A. Yes.

17 Q. And did you have C-section thereafter, or did you
18 deliver normally thereafter?

19 A. I delivered normally.

20 Q. Did you deliver at the same hospital all four
21 children?

22 A. Yes.

23 Q. And that hospital was what?

24 A. Community Memorial.

25 Q. Located --
00420

1 A. In Ventura, California.

2 Q. While you were at that hospital during the times
3 you were pregnant, or the times you were delivering, did
4 any person at the hospital, who seemed to be a health care
5 provider, meaning a doctor or a nurse, ever say anything to
6 you that suggested that they thought that you should not
7 smoke, either for your own health or for the health of your
8 child you were carrying, or one to be -- that had already
9 delivered?

10 I'll break it down for you. I didn't want to
11 loose -- you know, that's fine. I had a lot of people on
12 the end of the list, so I don't want to confuse the
13 witness.

14 At any time while you where at the hospital for

15 the pregnancy of -- the delivery of any of your children --
16 A. Yes.

17 Q. -- did any of the hospital people, doctor, nurses,
18 ever say anything to you that made you think that they were
19 suggesting that you ought not to smoke for the health of
20 either the child you were carrying, or of one you had just
21 delivered?

22 A. Not to smoke? I had -- Dr. Jung had asked me if I
23 was going to quit smoking, and I believe that was -- I'm
24 guessing after -- when Trevor was born.

25 Q. And who is Dr. Jung?

00421

1 A. He was the children's doctor.

2 Q. The pediatrician?

3 A. He was a family doctor.

4 Q. I'm sorry.

5 A. There is a difference.

6 Q. There is a difference.

7 And his first name is?

8 A. Ken, K-E-N.

9 Q. Has he been the family doctor who has been your
10 youngsters' doctor?

11 A. Part of the time, yes.

12 Q. And where was or is his office located?

13 A. In Ventura.

14 Q. Have you told me all that was said by either him
15 or you when he brought the subject up?

16 A. He just asked me. He said "Now, are you going
17 to --" he said, "Are you going to quit smoking now?"

18 And I told him that I would -- I would think about
19 it. Because he said, you know, now, you -- "You've got a
20 family you are doing."

21 And -- and -- I said "Well, I'll think about it."

22 I never said "Yes, I am going to," or anything
23 like that.

24 Q. This is --

25 A. He made a suggestion.

00422

1 Q. Okay. And this is with the birth of Trevor?

2 A. I believe it was Trevor.

3 Q. Was it during your pregnancy and before delivery
4 or after your delivery?

5 A. It was after -- after he was delivered.

6 Q. Was it in the hospital or in his office, meaning
7 Dr. Jung's, that --

8 A. In the hospital, because he ran to the window to
9 watch the -- the helicopter land. He was like a big kid.

10 Q. Did that have something to do with your situation,
11 or just an unrelated hospital matter?

12 A. No. It was just -- he was just excited that a
13 helicopter was landing on the roof.

14 MR. BARRON: Do you want to take a break?

15 MS. CHABER: The Court Reporter could use one.

16 MR. BARRON: We have been going for awhile.

17 That's fine.

18 VIDEO OPERATOR: Going off the record. The time
19 is 2:34.

20 (Recess taken from 2:34 to 2:59.)

21 VIDEO OPERATOR: Back on the record. The time is
22 2:59.

23 MR. BARRON: Q. Have you told me everything that
24 was said to you by Dr. Jung, or said by you to Dr. Jung
25 during this time when he talked to you about smoking?

00423

1 A. As much as I can recall.
2 Q. Do you believe that there were other things that
3 were said by him that you now no longer recall?
4 A. He just came in to check the baby over.
5 Q. Do you believe that there were other things said
6 by him concerning smoking that you now no longer recall?
7 A. I don't know. I don't think so.
8 Q. Do you think there were things said by you about
9 smoking to Dr. Jung that you now no longer recall?
10 A. I don't think so.
11 Q. And Trevor was born January 18, 1991, is that
12 right?
13 A. Yes.
14 Q. Now, this episode where you and your husband
15 were -- and these are not your words, but kind of crabby or
16 short with each other during a trip.
17 A. Yes.
18 Q. That was during this one serious attempt you made
19 before the one with the chronic bronchitis, is that
20 correct?
21 A. Yes.
22 Q. And did you and Leonard commence the effort to
23 quit at exactly the same time, or did one person start
24 before the other?
25 A. I believe it was on the same morning that we just
00424

1 quit smoking, I think.
2 Q. And would you list everything that you or he did
3 in an effort to quit --
4 A. What do you mean?
5 Q. -- when you first made the effort?
6 A. List?
7 Q. Yeah. Tell me all the things that were done.
8 A. I -- I just didn't light up. I -- I don't know
9 what you mean by "list."
10 Q. Well --
11 A. I don't know exactly what I did that day. I do
12 remember the day I quit, I went to the grocery store and I
13 was very dizzy very, very dizzy, and that lasted quite
14 awhile. That was the withdrawal symptom, I suppose.
15 Q. I am going to ask you some questions so that we
16 have described, with as much specificity as maybe we can,
17 with as much dough tail as maybe we can, this serious
18 attempt to quit that you and Leonard made.
19 First of all, did you and he plan, together, that
20 you were going to quit before either one of you made the
21 first physical effort to do so, or did it just kind of
22 happen as a spur of the moment?
23 A. I think it was the night before he had just said
24 "Let's quit smoking tomorrow," if I recall correctly. I
25 don't remember making a grand plan of something, just that
00425

1 tomorrow was -- nobody was going to smoke.
2 Q. And did you at first agree, disagree or say you
3 weren't sure.
4 A. I -- I agreed. I didn't...
5 Q. Did you ask in any way something along the lines
6 of "Golly, Leonard," or "Golly, honey, what's making you do
7 this?"
8 A. No, not that I remember.
9 Q. Or what came over you or why all of a sudden are
10 you bringing this up or anything like that at all?

11 A. I don't remember any specific -- the specific
12 conversation that involved it.

13 Q. Did he ever at that time that he brought it up the
14 night before, tell you what made him all of a sudden bring
15 this up?

16 A. I don't know if it was all of a sudden. I just
17 told you I don't remember the specifics of -- of why
18 exactly we planned right then to quit smoking, so I can't
19 tell you what he said to me exactly.

20 Q. But you understood the idea was that both of you
21 would, the following morning, not have a cigarette and try
22 to refrain from having cigarettes until, in effect, you had
23 quit --

24 A. Right.

25 Q. -- both of you?

00426

1 And so the next morning you both arose, and at the
2 point where you would normally want to have a cigarette or
3 normally would have a cigarette, you did not, is that it?

4 A. I did not.

5 Q. And he acted the same way and he did not, is that
6 it?

7 A. I guess. I went with him. I think he went to
8 work that day, if I remember.

9 Q. And did you remain home that entire day?

10 A. No. I -- I went to the grocery store.

11 Q. Other than going to the grocery store, did you
12 remain at home?

13 A. I don't remember. I just remember being in the
14 grocery store and -- and being very ill from being dizzy.

15 Q. How soon after you arose that morning was it that
16 you found yourself dizzy and, as you described it, feeling
17 very ill at the grocery store?

18 A. With -- within a couple hours, I would estimate.

19 Q. And how long did you remain dizzy and very ill, as
20 you've described it?

21 A. Off and on over a period of -- of days. I
22 couldn't tell you how many days.

23 Q. And when you say "off and on," do you mean that
24 sometimes during the day you wouldn't feel dizzy and ill,
25 and then it would come back again, and then you would feel

00427

1 dizzy and ill again?

2 A. I don't know that. I don't know how constant it
3 was because it -- it's been awhile.

4 Q. Now, when you arose that morning, after you and
5 Leonard had said that you were both going to not smoke and
6 to try to quit, did you still have cigarettes available in
7 the house?

8 A. I don't think so.

9 Q. Why not?

10 A. I think he threw them all away. I don't -- I
11 don't remember exactly what were done with them, but I
12 don't think there were cigarettes in the house.

13 Q. Do you have any knowledge or understanding of when
14 he threw them away, if he had done so?

15 A. No, I don't.

16 Q. Had he thrown away both his and yours?

17 A. I don't know. I am just saying that I assumed
18 that there wasn't any in the house because I didn't -- I
19 didn't smoke any, so I don't -- I don't know, actually.

20 Q. Did you normally, up to this point, carry
21 cigarettes in your purse, or in some other personal item of

22 yours that you'd have with you during the day?

23 A. Yes.

24 Q. And where was it that you would carry the
25 cigarettes?

00428

1 A. I don't know exactly. I may have kept them in the
2 diaper bag or -- or or in a purse.

3 Q. Did you have a cigarette container at the time,
4 meaning something that would hold the pack of cigarettes?

5 A. I -- I don't think so.

6 Q. Or a cigarette case?

7 A. I don't think so.

8 Q. When you arose that morning after having agreed
9 with Leonard to not smoke and to try to quit, did you not
10 even have available to you the cigarettes that normally
11 were kept by you, either in a diaper bag or in your purse?

12 A. I don't know.

13 Q. You don't remember one way or another?

14 A. Yeah. I don't -- I -- honestly, I don't remember
15 that, whether there were cigarettes in the house or not.
16 I -- I can't really say, because it's been so long that I
17 don't --

18 Q. Did you ever throw away any cigarettes after you
19 had told Leonard you agreed to not smoke and to try to
20 quit?

21 A. I don't remember.

22 Q. How long after was it that you and Leonard took
23 off on this trip you mentioned during which you had a
24 little spat or were crabby, or however you want to describe
25 it?

00429

1 A. It was more than -- you know, I'm not sure, but it
2 was within the week. The first week, I believe.

3 Q. To where were you going?

4 A. We went to Yosemite, Sequoias.

5 Q. And remained there for how long?

6 A. I believe it was two days -- two or three days.

7 Q. And hiked around and saw the sites?

8 A. No, we didn't hike around.

9 Q. I assumed something I shouldn't.

10 What did you do in Yosemite during those two days?

11 A. We just went up there and --

12 MR. BARRON: We are having some background noise
13 that might interfere here. We better fix it. Your lawyer
14 will figure out what's going on.

15 VIDEO OPERATOR: Going off the record it's 3:10.

16 (Recess taken from 3:10 to 3:16.)

17 VIDEO OPERATOR: We are back on the record. The
18 time is 3:16. Going off the record. The time is 3:16.

19 (Discussion off the Record.)

20 VIDEO OPERATOR: We are back on the record. The
21 time is 3:17.

22 MR. BARRON: Q. Well, I think we all hope we
23 have the air conditioning problem solved.

24 I think when we broke to try to fix the air
25 conditioner, I was talking about your serious attempt with

00430

1 your husband, Leonard, that both you and he were making to
2 quit, and we were talking about you folks going off to
3 Yosemite.

4 A. Yes.

5 Q. And I think I assumed wrongly, that you guys hiked
6 around, and I was about ready to find out what you did over

7 there in Yosemite during that trip.
8 A. We just kicked back around the campfire area.
9 Q. And you were there for about how long again?
10 A. I think it was two or three days.
11 Q. And was this a trip that had been planned before
12 your husband Leonard brought up the idea of trying to quit
13 smoking?
14 A. I think so.
15 Q. And between the time that he brought it up and you
16 and he made the first start on the effort, and the time
17 that you folks went off to Yosemite, did you call any
18 medical doctor about your reaction to not smoking or for
19 any guidance or help?
20 A. No.
21 Q. Did he?
22 A. No.
23 Q. Did you call any friend or family member about
24 that?
25 A. No.
00431
1 Q. Did he?
2 A. No.
3 Q. Did you call anyone that might have been
4 available, if there was such a person or organization, to
5 help people with the effort to quit smoking?
6 A. No.
7 Q. Before you and Leonard went off to Yosemite, did
8 you or he try any product that provides nicotine as part of
9 the product, like gum?
10 A. No.
11 Q. Did you and he talk about that as a possibility
12 before you left for Yosemite?
13 MS. CHABER: Lacks foundation, that it was
14 available.
15 JUSTICE DOSSE: Sustained.
16 MR. BARRON: Q. Now, when you were in Yosemite,
17 was it just you and Leonard, or did you have friends or
18 children or anything with you?
19 A. We had Troy with us.
20 Q. And Troy was the oldest?
21 A. He was our only child.
22 Q. That's right. How old was he then?
23 A. He was sitting in a walker in the pictures, so I
24 would assume he was under a year old or --
25 Q. Do you have any --
00432
1 A. -- around in there.
2 Q. I'm sorry. I thought you had finished.
3 Do you have any pictures here of that time that
4 you were in Yosemite?
5 MS. CHABER: I thought there was.
6 THE WITNESS: I don't know. I have one at home
7 but I don't know if I brought it. The ones because these
8 are pretty much in order here. No. This was later.
9 MS. CHABER: Okay. I knew there was one camping.
10 MR. BARRON: Q. The one that you remember that
11 is at home, it was taken in Yosemite?
12 A. Yes.
13 Q. And in the campground, or somewhere else?
14 A. In the -- in the campground.
15 Q. And it shows who in the picture?
16 A. Me and Leonard and -- and my son, Troy.
17 Q. And who took the picture? Just some other camper?

18 A. The people, yes, in the campground next to us.
19 Q. Now, during the time that you were in Yosemite,
20 what physical problems if any did you have that you thought
21 was caused or contributed to by the fact that you were now
22 not smoking?

23 A. Physical problems?

24 Q. Yes.

25 A. Just the uncontrollable urge to smoke, the

00433

1 irritability, the -- it was constant mood swings, and it --
2 it was a trip from hell almost, because of the emotional
3 and physical things that were going on at the time.

4 Q. During this approximate two-week period or so when
5 you were making this serious attempt to quit, were there
6 times when you were feeling better than others?

7 A. I guess so.

8 Q. Well, I don't want you to guess.

9 A. Well, I don't -- I don't know.

10 Q. You don't remember?

11 A. Yeah. It's -- you know, it -- roller coaster
12 ride, I guess. I -- it was awful.

13 Q. Well, what I am trying to find out is, for
14 example, from the time that you quit to the time you
15 started smoking again, did, from your standpoint, your
16 problems seem to get worse and worse with each passing day,
17 did they get worse for awhile and then get better? Did
18 they go up and down as you just described it in a roller
19 coaster more than once before the end of the period, or
20 just what?

21 A. It was -- I would -- to honestly answer, it was a
22 roller coaster ride, where sometimes it was just -- you are
23 climbing the walls and -- and just fighting the urges that
24 my body wanted to smoke.

25 Q. Did it not seem to you that in the last several

00434

1 days before you started smoking again, you actually were
2 feeling better than you had during the first several days
3 that you were trying to quit?

4 A. I can't -- the dizziness was -- was not there, I
5 remember, but going to a McDonald's and smelling cigarettes
6 in there when we went -- were coming home just did it.
7 Brought every -- you know, made it just trigger more want,
8 the cravings. Because everybody in the -- in the
9 McDonald's restaurant there was -- not everybody, but there
10 was people in there smoking, and it was a -- a -- just kind
11 of started everything up again.

12 Q. Are you indicating, then, that after awhile, the
13 physical symptoms improved and stayed improved, but your
14 craving did not seem to diminish?

15 A. The dizziness had gone away, but the irritableness
16 and the craving did not.

17 Q. After a week or ten days had passed, besides the
18 craving, especially when you were around smoke like at
19 McDonald's when other people were smoking, and except for
20 the irritability, was there anything that still remained
21 that you felt was a problem from the fact that you were no
22 longer smoking?

23 A. I -- I don't understand what you -- what do you
24 mean, that remained?

25 Q. Remained as a problem for you physically.

00435

1 A. I -- I still wanted to smoke.

2 Q. Anything else?

3 A. I don't know what else you mean.
4 Q. I am not meaning anything.
5 A. What --
6 Q. I am just trying to find out from you what you
7 felt or believed.
8 A. "Felt or believed," I'll -- all I know is it was
9 sheer hell going without smoking.
10 Q. And I'm trying to find out what was it that made
11 it, from your standpoint, as you call it, "sheer hell."
12 And I am trying to find out if there was anything
13 after a week or ten days passed, in addition to the craving
14 that you described for wanting a cigarette, especially when
15 you smelled smoke coming from others, and other than the
16 irritability that led you to describe it as "sheer hell"?
17 A. Anything else --
18 Q. Anything else of a physical or mental nature,
19 other than what I've just said?
20 A. That I wanted a cigarette very badly.
21 Q. Anything else?
22 A. I don't know what else you expect me to say. I --
23 Q. I don't expect you to say anything.
24 A. Well, then, I answered your question then, I
25 guess.

00436

1 Q. And when you say "wanted a cigarette," that's
2 another way of saying you craved a cigarette?
3 A. Yes. And as soon as I was able to get to one, I
4 smoked it.
5 Q. Now, as you understand it, who is the first one to
6 go back to smoking, you or your husband, Leonard?
7 A. Me.
8 Q. And did Leonard, in fact, go back to smoking at
9 some time after you did?
10 A. I think so, yes.
11 Q. But you are not sure?
12 A. Well, in that time period, I don't remember -- I
13 know I started smoking back up.
14 Q. But you know --
15 A. I can just speak for myself on that.
16 Q. And I know you can't be sure because you weren't
17 with him all the time and people can forget or fib, even
18 husbands, but as far as you understood it, was there a time
19 after you went back and your quit attempt failed that he,
20 Leonard, appeared to still have been successful in his quit
21 effort?
22 A. I think he -- he quit longer than me. If I
23 remember correctly, that he had lasted longer than me.
24 Q. And if you remember correctly, how much longer did
25 he last than you in his quit attempt?

00437

1 A. You know, I'm not sure. Maybe two -- two -- a
2 month or two months. Maybe. I -- I'm not sure.
3 Q. After Leonard went back to smoking, whenever it
4 was after this quit attempt, did he --
5 A. Yes.
6 Q. -- what you believed to be another serious attempt
7 to quit before this period in February of 1998 where you
8 both went to quit again
9 A. Yes.
10 Q. Did he make more than one other serious attempt
11 before the February 1998 attempt?
12 A. I only remember him stopping with me, and then
13 another attempt after that.

14 Q. Meaning another attempt after that, but before the
15 February 1998 one?

16 A. Right. Before the successful ...

17 Q. And can you place in time or relationship to
18 events, when it was that Leonard made his, in your time
19 together, second serious attempt?

20 A. His -- it was -- I believe my daughter Elizabeth
21 was two or three and he had quit for three months.

22 Q. During this second occasion?

23 A. Yes.

24 Q. Your daughter, I think, was born in August of '93.
25 So you are talking about the '95 to '96 time period,

00438

1 roughly?

2 A. Yes, yes, it was in there.

3 Q. And in that effort, did he do anything different
4 or additional than he had done the first time in his
5 attempt when he was quitting with you, as far as you know?

6 A. I -- I don't know. I think he just quit. I don't
7 know what he did. I'm not aware that he did anything
8 special.

9 Q. When your husband Leonard indicated, or you
10 learned that his first serious attempt that was made with
11 you while you were together to quit, had failed, or that he
12 had decided to go back to first, what did he tell you was
13 the reason why he started smoking again?

14 A. The first time he got mad at me because I asked
15 him to rake up the dog poop and he didn't want to.

16 Q. And --

17 A. It was an excuse, I guess. You asked.

18 Q. Okay. Can you explain in a little more detail
19 what not -- not the raking part -- but how that relates to
20 him going back to smoking? I mean, was -- I don't quite
21 see the connection, so if you could connect it for me.

22 A. When you have two large Rottweilers in the back
23 yard there was a lot of poop back there. He was not in the
24 mood to rake up dog poop and I threw a fit to ask him to
25 clean it up. Is that the details you wanted?

00439

1 Q. But I'm still having trouble connecting with how
2 or why that causes Leonard to go back to smoke. Is it
3 because he's trying to show his being annoyed with you and,
4 therefore, he's going to do something that he knows you
5 don't want him to do, or what? That's what I'm not --

6 MS. CHABER: Calls for speculation.

7 JUSTICE DOSSE: Sustained.

8 MR. BARRON: Q. Well, did -- did you ever
9 conclude what the relationship was, if any, between your
10 asking him to do that chore and his beginning to smoke
11 again?

12 A. Sure. I guess it made him mad and he could blame
13 it on me, in his own mind. I mean, in a husband and wife
14 thing, that's -- everybody knows those kind of situations.

15 Q. What about the time that your husband Leonard went
16 back to smoking after his second serious attempt when you
17 and he were together, did you ever come to any
18 understanding, or did you ever learn anything about what
19 caused him to return to smoke?

20 A. Yes. He -- he was very upset. His mother almost
21 died and he came home in -- came home smoking.

22 Q. Now, I'd like to ask you whether Dr. Jung --

23 MS. CHABER: Are you okay?

24 THE WITNESS: Yeah. I'm fine.

25 MR. BARRON: Q. I'm sorry. I was looking at my

00440

1 notes. Are you all right?

2 A. I'm fine. I was just rubbing my eyes.

3 Q. We all know the ground rule that I've tried to
4 make sure you understand, which is I -- if you are getting
5 tired, or physically or emotionally finding it difficult,
6 just tell us and we'll break for a recess or for all time
7 today. Okay?

8 A. Okay.

9 Q. Was the Dr. Jung that we talked about earlier, a
10 doctor who saw you at Community Memorial Hospital of San
11 Buena Vista?

12 A. San Buena Vista?

13 Q. Yes.

14 A. I don't know what San Buena Vista is, but a doctor
15 Ken Jung was a family doctor.

16 Q. Community Memorial Hospital is a hospital you've
17 heard of?

18 A. Yes.

19 Q. And in what town or community is it located?

20 A. Ventura.

21 Q. Is there a Buena Vista section of Ventura -- San
22 Buena Vista section of Ventura?

23 A. Maybe they use the whole word of San Buena Ventura
24 for the city. I have -- I don't know.

25 Q. But the community -- excuse me. Community

00441

1 Memorial Hospital, the one in Ventura, is the place where
2 Dr. Jung talked to you about smoking?

3 A. Yes, I -- yes.

4 Q. Do you remember him, or any doctor actually
5 including, as part of their instructions to you when you
6 were being discharged from the hospital, instructions,
7 either verbally or in writing, that you should not smoke?

8 A. No.

9 Q. When you were being discharged from hospitals with
10 the birth of any of these children from the Community
11 Memorial Hospital, were you ever given a piece of paper to
12 go with you that contained any advice or instructions, what
13 hospitals sometimes call discharge instructions or
14 discharge sheet?

15 A. I believe so.

16 Q. Was it your practice to read those instructions or
17 recommendations or not?

18 A. Not -- I don't recall.

19 Q. Do you recall whether -- strike that.

20 Was there at the hospital, a health care person,
21 like a doctor or a nurse or technician, who went over the
22 instructions with you, or recommendations with you, in
23 other words, pointed them out to you?

24 A. They just have you sign the papers. I -- I did
25 what I call drive-through delivery. I paid for it myself.

00442

1 I paid for it myself. You are there as short a time as
2 possible. They kind of herd you in and herd you out, so
3 I --

4 Q. Other than Dr. Jung, and up until the time in
5 February of '98 when you had the chronic bronchitis, did
6 any other doctor or health care person recommend to you,
7 suggest to you, indicate to you that you should not smoke?

8 A. Not that I'm aware of. Not that I remember.

9 Q. Do you remember a Dr. James Halverson?

10 A. Oh, yes.
11 Q. Did you see him at the Ojai Valley Medical Center?
12 A. Yes.
13 Q. For what reason?
14 A. That was when I had a rapid heartbeat.
15 Q. What did you eventually learn as to why you had a
16 rapid heartbeat?
17 A. Actually, he -- they did not find the source, but
18 they -- he told me to quit -- cut down on caffeine, and he
19 did tell me to quit smoking, that it would help, but he
20 said he also knew that was a hard thing to do.
21 Q. Did he also tell you, though, he knew it could be
22 done and that other people had done it?
23 A. He just suggested that I quit.
24 Q. Did he also tell you that even though it was
25 difficult, he knew other people who had done it?

00443
1 A. He didn't go into detail.
2 Q. Did you ask him --
3 A. No.
4 Q. -- to go into detail?
5 A. No.
6 Q. Also, isn't it also the case that a Dr. Jung,
J-U-N-G, or Jung --
7 A. Ken Jung.
8 MS. CHABER: He's the same one.
9 MR. BARRON: Q. Is that same one?
10 A. Yes. He's the same doctor.
11 MR. BARRON: Q. Did he tell you the same thing,
12 that is, that you should stop smoking, when he was involved
13 with a child of yours that was born in 1996?
14 MS. CHABER: This was asked and answered. This is
15 what she had gone through. This is the Dr. Jung.
16 MR. BARRON: Okay. I see what you are saying.
17 THE WITNESS: I'm sorry. I forgot about
18 Dr. Halverson. This stuff kind of all runs together.
19 Q. I'd like to switch subjects for a minute and go
20 back in time. I'm telling you that so I don't lose you, or
21 at least I am going to try not to loose you as to where I
22 am going. There was a period of a high school that you
23 went on to junior college, correct?
24 A. To truck driving --

00444
1 Q. Okay. Wasn't that at Oxnard Junior College?
2 A. Yes.
3 Q. Okay. The reason I was looking that way, your
4 lawyer looked at me as if I was wrong, and I can be -- I
5 just wanted to make sure that I was understanding it.
6 The truck driving school was at Oxnard Junior
7 College --
8 A. Yes.
9 Q. -- is that correct?
10 A. Yes, it was through Oxnard Junior College.
11 Q. And did you acctually take the course by taking
12 units at the junior college? Do you know what I mean,
13 junior college units?
14 A. Yes, but I -- I don't believe that there was a
15 grade involved.
16 Q. And you were there for how long in order to
17 complete the truck driving program?
18 A. I took a summer course, and I believe a regular --
19 I -- I don't recall if I took a summer course and two --
20 two classes after that or the -- the -- I took a summer

21 course and then a class, is I think how it went, or vice
22 versa.

23 Q. Did the course, or class, or both, involve, to any
24 extent, instruction about safety procedures?

25 A. Yes.

00445

1 Q. About safety instructions?

2 A. Safety instructions involving driving?

3 Q. Yes.

4 A. Yes.

5 Q. About government regulationss?

6 A. I suppose at some point for -- government
7 regulations on what?

8 Q. Well, I didn't take the course. I'm only asking
9 questions.

10 A. I'm telling.

11 MS. CHABER: She's telling you it's vague --

12 MR. BARRON: So -- okay. I'm sorry. I'll let
13 your lawyer finish.

14 MS. CHABER: It's vague and ambiguous, a course on
15 government regulations.

16 MR. BARRON: No. I didn't say a course on it. I
17 said -- or meant to say, anyway, during the course or class
18 summer, and otherwise that you took on truck driving at
19 Oxnard Junior College, was there any instruction concerning
20 government regulations?

21 A. I -- I don't -- I couldn't tell you. Maybe in --
22 involving truck driving, yes; but I couldn't be specific on
23 what government regulations you are trying to get at.

24 Q. Did you learn anything about government
25 regulations involving safety for trucks or truck driving?

00446

1 A. I can't be specific on any regulations that they
2 taught me except what was in the course. Again, I --

3 A. I -- I can't be specific with you. I don't know
4 where you are coming from on this, how it relates to any --
5 anything with smoking.

6 Q. Were you informed about or instructed about any
7 government regulations that related to safety of trucks or
8 the equipment associated with trucks?

9 A. I still don't understand what you mean by that.

10 Q. I'm not going to quiz you on what the regulations
11 were, if you were instructed on them. I am not looking for
12 a particular regulation.

13 I am just asking you, at any time during the
14 course or class, or both, that you took on trucking at the
15 junior college, was there any instruction at all on
16 government regulations that applied to the trucks or
17 equipment associated with them?

18 A. I can only say I'm assuming there was.

19 Q. Did you believe that any of those regulations had
20 a safety purpose for either the truck driver or members of
21 the community?

22 A. I don't know. I just took --

23 MS. CHABER: You don't know. That's an answer.

24 MR. BARRON: Q. Did you believe that the
25 government regulations had a meritorious purpose?

00447

1 MS. CHABER: Objection. Calls for speculation,
2 lacks foundation. She says she's assuming there were
3 some --

4 JUSTICE DOSSE: Yeah. We don't know what
5 regulations we might be talking about. Are we talking

6 about the California Vehicle Code, things of that nature?
7 I -- there's no basis on which to build on this question.

8 MR. BARRON: Well, I can't define it, be they
9 California or Federal at this point, because she is
10 indicating she doesn't necessarily remember the specific
11 ones, your Honor, and I'm trying to group them by category.
12 I can ask them by Federal, I'll do that if it would assist.

13 Q. During your time at Oxnard Junior College, and
14 when you were taking the trucking class or course or both,
15 did you receive any instruction, without regard to what the
16 specifics were right now, but any instruction or any
17 information about Federal government regulations involving
18 the safety of the trucks or the equipment associated with
19 the trucks?

20 A. I don't know in specifics, but I was taught
21 safety. I don't know whether it was government-regulated
22 or not. I was in a -- a college class.

23 Q. Did you accept, as having merit, the safety
24 concepts that were provided to you during the instruction,
25 even if they came from the government?

00448

1 MS. CHABER: Vague and ambiguous, it calls for
2 speculation.

3 JUSTICE DOSSE: Sustained.

4 MR. BARRON: Can we go off the record for a
5 moment, see if I can get some direction, if I can rephrase
6 the question in a way that wouldn't call for speculation.

7 MS. CHABER: Does that mean we are taking a break?

8 MR. BARRON: For a second, sure.

9 VIDEO OPERATOR: I'll just change tape while I'm
10 at it.

11 VIDEO OPERATOR: This marks the end of tape 2 of
12 volume 3 of the deposition of Leslie Whiteley. Going off
13 the record the time is 3:49.

14 (Recess taken from 3:49 to 3:52.)

15 VIDEO OPERATOR: This marks the start of tape 3 of
16 volume 3 in the deposition of Leslie Whiteley. Going on
17 the record. The time is 3:52.

18 MR. BARRON: Q. Let's see if we can make it not
19 specific and back up a little bit.

20 Again,, I don't want you right now to try to
21 recall any specific information, any specific regulation,
22 anything specifically that you may have been taught, but I
23 want to find out, first of all, whether you remember, in
24 fact, that while you were taking the trucking course, at
25 some point some information was provided to you about

00449

1 Federal government regulations that dealt with the safety
2 of the truck as a machine or the equipment associated with
3 the truck, or both.

4 A. I don't know if it was Federal. I can't -- you
5 know, I --

6 Q. You don't know whether it was Federal or State,
7 but you remember some information about such safety
8 regulations?

9 A. Well, I know there's a safety checklist you go
10 through, the pre -- prepping your truck, your safety list
11 you go through.

12 Q. And you don't know whether that came from the
13 Federal government or the State government, or somewhere
14 else?

15 A. It came from the -- the instructor that -- he
16 handed it to me. You go through your pretrip before you --

17 there are safety procedures, yes.

18 Q. Did you ever become aware, during the instruction
19 that you received, that there were any safety procedures
20 associated with people who drove truck that came from
21 government requirements?

22 A. I -- I guess.

23 MS. CHABER: Don't guess. That's where we are at.

24 THE WITNESS: See, this -- I -- I don't know.

25 I -- I don't know where this is --

00450

1 MS. CHABER: Nobody wants you to guess or
2 speculate.

3 So the question is: Do you know, or do you not
4 know whether they came from government regulations? If I
5 can rephrase for you, Counsel.

6 THE WITNESS: All I know is I was in a course for
7 truck driving and they were teaching us how to drive
8 trucks. What does the government have to do with me being
9 in college?

10 MR. BARRON: Q. So by the time you finished the
11 trucking course and class, you don't remember ever having
12 any information given to you where you knew the information
13 was what the Federal government required, concerning the
14 safety of the truck or any equipment associated with the
15 truck?

16 A. Specifically? No, I don't -- I still don't
17 understand exactly what information exactly you want.

18 Q. Before you finished the trucking class at the
19 junior college, were you ever informed of any government
20 Federal regulations that involved rules for Interstate
21 trucking?

22 A. If it was part of the -- of the course, yes. If
23 it was part of the course.

24 I am telling you specifically right now, I am not
25 going to swear that I remember a certain thing happening

00451

1 if -- if I don't remember it exactly the way it is. And
2 you keep asking me the same question over and over and over
3 again.

4 Q. Well, I don't mean to ask the same question.

5 I'm --

6 A. It's the same thing. You just keep asking the
7 same thing.

8 Q. Do you have an opinion as to what your reaction
9 was or would have been to Federal government regulations
10 concerning trucks and equipment associated with it, if
11 those regulations indicated that they had a safety purpose?

12 MS. CHABER: Objection. Calls for speculation,
13 vague and ambiguous.

14 JUSTICE DOSSE: Sustained.

15 MR. BARRON: Q. Did you become a licensed truck
16 driver?

17 A. Yes.

18 Q. What class?

19 A. Class I license.

20 Q. For how long did you hold the class?

21 A. I'm not sure. It was -- when it was time to renew
22 it I was pregnant with Troy, I believe. I'm not sure. I'm
23 not sure. I was pregnant at the time, but I don't remember
24 which child it was.

25 Q. You mentioned that you wore motorcycle helmets,

00452

1 when you answered a question by your lawyer. Do you

2 remember that?

3 A. Yes.

4 Q. Have you, on every occasion that you've been on a
5 motorcycle, worn a helmet?

6 A. No.

7 Q. When did you not wear a helmet, and when did you
8 wear a helmet, if you can place it in time?

9 A. When there was a law for helmets and when there
10 wasn't a law for helmets.

11 Q. When there wasn't a law for helmets, you didn't
12 wear one, and when there was a law that was passed
13 requiring that one wear a helmet, you then complied with
14 the law and wore a helmet?

15 A. Yes.

16 Q. Before the law was passed, did you have a personal
17 point of view of whether there should or should not been
18 such a law?

19 A. I never thought about it.

20 Q. You were aware, weren't you, that there were
21 motorcycle people in California who were opposed to the
22 passage of such a law?

23 A. Oh, yes.

24 Q. Who said that it was invading their privacy
25 rights, or their rights to be responsible for themselves
00453

1 and they wished to ride without a helmet?

2 A. Yes.

3 Q. You never had that political or philosophical
4 point of view?

5 A. My own preference.

6 Q. Was what?

7 A. Was I -- I liked to be able to have peripheral
8 vision, and the helmet takes that away. Also, if you've
9 ever had a bee in your helmet, it's not fun. And it hurts
10 your neck. There's a lot of -- it's a personal preference.
11 It has -- that's it. It has nothing to do with what other
12 people think.

13 Q. Before the law was passed, did you have a position
14 or point of view or thought whether it was safer to ride a
15 motorcycle with or without a helmet?

16 A. I don't know. That's not a -- it wasn't --

17 MS. CHABER: You answered the question.

18 MR. BARRON: Q. Either before or at the time
19 of -- or after the law requiring helmets was passed, did
20 you ever develop an idea that the government was passing
21 the law because the government took the position that it
22 was something that would improve the safety for the rider?

23 A. My opinion that I had read on that was just it was
24 over money, because of that, but I just -- you know,
25 everybody has their own opinion.

00454

1 Q. What did you -- what do you mean when you say your
2 opinion at the time was it was over money?

3 A. They were talking about that if people wore
4 helmets, it would be -- it would save money; but where, I
5 don't know. That's -- you know, I -- I wasn't in -- didn't
6 rally, or any of that stuff. That was not my thing.

7 Q. So at no time have you ever developed an idea or a
8 thought or an opinion whether the government, when it
9 passed the helmet law, thought that it was increasing the
10 safety for the rider? Or to put it another way, decreasing
11 the risk of injury or death to the rider?

12 A. No. Actually, I -- I could laugh about that,

13 because people go threw windshields in their cars all the
14 time, and if they had a helmet on maybe it would save their
15 life. I mean, does -- what's the deal? To me, it was
16 no -- it wasn't an issue with me.

17 Q. Was there a time that you remember in California
18 where there was not the required use of seat belts?

19 MS. CHABER: Your Honor, I am going to object. I
20 think we are going so far afield that this is getting
21 beyond the scope of reasonable discovery.

22 JUSTICE DOSSE: Anything further on that?

23 MR. BARRON: No.

24 JUSTICE DOSSE: The objection is sustained.

25 MR. BARRON: Q. What has been your practice,
00455

1 when you've been responsible for yourself, as to whether
2 you have worn or not worn seat belts?

3 MS. CHABER: Objection. Irrelevant. Not
4 calculated to lead to the discovery of admissible evidence.

5 JUSTICE DOSSE: Sustained.

6 MR. BARRON: Q. Let's switch subjects again for
7 a moment.

8 What I'd like you to do is with your lawyer's assistance,
9 is find the set of photographs copies of which I don't
10 think have been provided to us and I'm not casting
11 aspersions there, Madelyn -- but photographs of you at
12 various times and places, some of which had cigarettes or
13 smoking in them.

14 A. They all did.

15 Q. Okay.

16 MS. CHABER: It's Exhibit 3 --

17 THE WITNESS: Or ashtrays, or it was what --

18 MS. CHABER: -- a through Z.

19 THE WITNESS: -- asked for.

20 MS. CHABER: I believe A through Z, 3-A through Z.

21 MR. BARRON: Q. Do these photographs represent
22 all the photographs that are under your custody, control or
23 possession that have you and cigarettes, or smoking, or
ashtrays in them?

24 A. That I could find
00456

1 Q. Okay. I'd like to run through them quickly. I
2 don't know the best way of doing it. I kind of wanted to
3 look at them as we do it.

4 JUSTICE DOSSE: Is there any objection to
5 repositioning?

6 MR. BARRON: Any chance that -- can I just do
7 that?

8 JUSTICE DOSSE: Fine.

9 MS. CHABER: Do you want to switch mikes then?

10 JUSTICE DOSSE: Maybe you can stay right where you
11 are and we can get another chair over there or something.

12 MS. CHABER: I'll just stand quietly here in the
13 background, assuming that --

14 MR. BARRON: Just put it by the side there would
15 be fine by me, turn it around this way, if you can still
16 see it.

17 MS. CHABER: I was going to suggest, if you wanted
18 to come here, Counsel, I don't have a problem with you
19 sitting --

20 MR. BARRON: Q. Actually, maybe you can just hold
21 it up, maybe that would work, then I can see it and the
22 camera can still see it. Why don't you try that, and
23 Madelyn can help you there. Okay. That has no one else in

24 it, so that's 3-A. You may turn the page to 3-B, if you
25 would.

00457

1 A. And 3-C has other people in it. Again,, I'm not
2 clear who is who. Could you run through who those are?

3 A. This guy's name is John.

4 Q. John what?

5 A. I believe it's Milliken, but -- Milliker -- but
6 I'm not sure on it.

7 Q. He was in the Ventura-Ojai area?

8 A. No -- this says.

9 Q. I'm sorry Ocean -- I can't read Oceanside,
10 Virginia?

11 A. Yes.

12 Q. Okay. He was in the Navy?

13 A. Yes.

14 Q. A friend of your husband's

15 A. And mine, yes. And behind him is his wife
16 Juanita. I don't remember this couple's name. This is me.

17 Q. The other couple, did you or your husband know
18 them through your husband's Naval connections?

19 A. Yes. He -- he was a ship mate.

20 Q. If you would, turn the page to the next one. And
21 those are both you?

22 A. Yes.

23 Q. Can you turn the page again, please? The
24 photograph 3-F has some people in it. Can you identify who
25 those are?

00458

1 A. Yes,. My uncle Ray and my mother. And I'm not
2 sure who she's holding. It may be my niece, Heather.

3 Q. Ray's last name is what?

4 A. Roberson.

5 Q. And who is the fellow playing the guitar?

6 A. That is me.

7 Q. Well, I -- I apologize. I can't see. I just --
8 it's a long way off and I just saw jeans there and assumed
9 it was a guy, so I apologize.

10 A. Women don't just wear skirts.

11 Q. I know. We've already agreed that I have bad eyes
12 and I'm using these off-the-shelf glasses, and I can't see
13 very far any more without glasses, it looks like, so I
14 apologize.

15 A. Would you like to try mine?

16 MS. CHABER: Or mine?

17 MR. BARRON: Q. Well, they might work. Okay.

18 It would be the top left as the camera looks at
19 why you are pointing at it.

20 A. Dan Smith.

21 Q. Who was what?

22 A. A friend of Leonard's. And this is me.

23 Q. I see.

24 A. I have jeans on.

25 Q. And the the camera lighting is a little better,

00459

1 you have to concede.

2 A. Okay.

3 Q. You can turn the page, if you would. Okay. And
4 the top left, again, as I look at it, there you are. And
5 who is next to you there?

6 A. Dan Smith. It's the same gentleman in the
7 previous picture.

8 Q. Okay. And if you would turn the page again, that

9 would be great.
10 A. Not a real flattering shot there.
11 Q. I wasn't going to even guess who that was, but I
12 do see it's a woman.
13 A. It's me.
14 Q. Okay. The bottom photograph as you look down
15 there, can you tell who that fellow is? I guess it's a
16 fellow again. I'm trying to see.
17 A. Yeah. This gentleman?
18 Q. Yes.
19 A. His name I believe was Curtis, I think. He
20 committed suicide. He's -- I was told he's dead.
21 Q. If you could turn the page, that would be great.
22 A. The middle photograph has a group of folks, it
23 looks like some "canyon." I can't read that far away.
24 A. Matilija Canyon.
25 Q. Okay.

00460

1 A. This is my little brother and me and Dan Smith,
2 and I think that's his son, from looking upside down.
3 MS. CHABER: I am going to move that.
4 MR. BARRON: Q. Now, the photographs on your
5 left side, the camera's right side are a little darker, and
6 especially the bottom one, so I can't make out -- it looks
7 like the same people in each on the right-hand side.
8 A. Me and my husband on our wedding day.
9 Q. Okay. And that's -- it says down below, wedding,
10 of May 3rd, 1986?
11 A. Yes.
12 Q. Okay. Would you turn the page, please, again.
13 3-N, which is on your right side, the camera's left side?
14 A. This one?
15 Q. Yes.
16 A. This is my sister-in-law, Brenda.
17 Q. And her last name again, is?
18 A. Whitaker.
19 Q. Okay. And I think I know the rest.
20 And then on the -- your left side the camera's
21 right, it looks like that's Troy's birth. I can read
22 "1988."
23 A. Yes.
24 Q. If you could turn the page again,, that would be
25 great. And you can turn it again, that would be great.

00461

1 And you may turn it again, if you would. And again,, if
2 you would.
3 Q. Okay. The top photograph there, I can't read that
4 far.
5 A. This is my mother. This is a package of my
6 cigarettes that was sitting there.
7 Q. Okay. That's the top photo of 3-V, as in Victor?
8 A. Yes.
9 Q. Okay. If you could turn the page again, that
10 would be great. I can't see that far who is playing the
11 guitar there?
12 A. My sister-in-law, Brenda. This just shows the
13 ashtrays on the -- the end table.
14 Q. And on the camera's right-hand side, your
15 left-hand side, we have a motorcycle?
16 A. Yes.
17 Q. And whose motorcycle was that?
18 A. Mine and my husband's.
19 Q. Okay.

20 A. And there is a helmet underneath this leather
21 jacket.
22 Q. Because there must be a helmet law by then, right?
23 Do you want to turn the page, please, if you
24 would?
25 A. Okay.

00462
1 Q. Okay. Thank you.
2 A. A leather jacket on a hot day.
3 A. A leather jacket on a hot day.
4 Q. Now, your second serious attempt to quit smoking
5 and your husband's third serious attempt to quit smoking
6 was in February of 1998?

7 A. Wait a minute. My second serious attempt. I --
8 Q. Yes.

9 A. What do you mean by that?
10 Q. The same way we have been using that phrase
11 throughout the whole deposition.

12 A. Okay.
13 Q. And based on your earlier testimony that you gave,
14 including that to your lawyer is what I am basing it on.

15 A. What -- I mean, what time, the second --
16 Q. Okay. Well, I -- I understood you and Leonard
17 made a serious attempt together?

18 A. Yes.
19 Q. And we talked about that, that involved the
20 Yosemite trip.

21 Then you went back to smoking sooner than he did,
22 but he eventually went back, and then he made another
23 serious attempt and it lasted as long it did and he quit
24 for the -- I mean, excuse me.

25 He went back to smoking for the reason he did.

00463
1 And then I was trying to establish that you and he both
2 again made an attempt in February of 1998 that was serious,
3 and that was --

4 A. February --
5 Q. February. That was your second serious attempt --
6 A. Okay.

7 Q. -- and his third serious attempt while you folks
8 were together?

9 A. Right.
10 Q. Okay. And that followed your involvement with a
11 doctor and what you've called chronic bronchitis, am I
12 correct?

13 A. Yes.
14 Q. And for how long did you have the condition that
15 ultimately was determined to be chronic bronchitis before
16 you saw that doctor?

17 A. Approximately, I would say a week, because it was,
18 you know, a cold that got worse. As the symptoms got
19 worse, then I went to seek medical care.

20 Q. And the doctor or health care person that you
21 first saw for that was whom?

22 A. Dr. LaMonica.
23 Q. What's his first name?
24 A. I don't know. It was at a clinic in Ojai.
25 Q. What was the name of the clinic?

00464
1 A. Ojai Valley Community Health Center, I believe.
2 Q. Was that one of those you urgent or emergency
3 care-type places where you just walked in, or was it more
4 the clinic type, where there were different doctors with

5 different specialties that practice together?
6 A. It's an -- excuse me. It's a clinic. It is not
7 an emergency care.

8 Q. Had you seen this doctor before for any other
9 conditions or problems?

10 A. I don't know, because it being a clinic there is
11 always different doctors in there, so I couldn't tell you
12 which -- if I had seen him in particular before.

13 Q. You had been to the clinic before, however?

14 A. Yes.

15 Q. Do you know how you got to Dr. LaMonica as opposed
16 to another doctor? In other words, did another doctor
17 recommend him, did you select him, or just walk --

18 A. No. They just assigned him to me when I had
19 called to make the appointment. It was a clinic. You see
20 who, I guess, is available. There's a -- a lot of medical
21 people go in there. It's a --

22 Q. Did that doctor have any specialty?

23 A. Not that I know of. He was a doctor, medical
24 doctor.

25 Q. You are not sure? He didn't have one, you just

00465

1 don't know that he did?

2 A. I don't know that he did or didn't.

3 Q. Now, did you see Dr. LaMonica more than one time
4 for this chronic bronchitis as we have been calling it --

5 A. No.

6 Q. -- condition?

7 A. No.

8 Q. Did Dr. LaMonica tell you that smoking was, in his
9 opinion, a likely cause of your chronic bronchitis?

10 A. Yes.

11 Q. Was your chronic bronchitis at that time, in your
12 opinion, causing you appreciable pain?

13 A. Yes, it was.

14 Q. Was it causing you appreciable harm, from your
15 standpoint?

16 A. I -- that's.

17 MS. CHABER: Vague and ambiguous, calls for
18 speculation as to what you mean by "harm."

19 JUSTICE DOSSE: Overruled.

20 You can answer the question.

21 THE WITNESS: Harm? I was in so much pain, that's
22 why I made the doctor appointment, because I could not
23 breathe. It hurt to breathe -- actually breathe.

24 MR. BARRON: Q. So when you --

25 A. I was -- something was wrong with me.

00466

1 Q. So at the time you thought you were suffering some
2 appreciable harm from what was going?

3 A. I -- I was sick. That's -- and that's why I went
4 to the doctor, I -- I had been sick. My lungs were all
5 infected, you know, you go to the doctor. Is that the
6 answer you were --

7 Q. When the doctor told you that he thought that
8 smoking was a cause of this condition, did you believe that
9 he was correct?

10 A. I listened to him because he told me that at that
11 point. Obviously I couldn't, I -- at this point I -- I
12 couldn't breathe. I just wanted to get some medicine and
13 get well, is why I went, and he spent the time looking at
14 me.

15 Q. You didn't think he was lying to you, did you?

16 A. He was -- he told me he thought that as long as I
17 smoked, I would have those episodes.

18 Q. My question is: You didn't think he was lying to
19 you?

20 A. Not at that point, no.

21 Q. So when he told you that he thought that smoking
22 was a cause, you believed him, didn't you?

23 A. At that -- at that point, I don't know what I
24 believed. I just wanted to get the pain taken care of.

25 Q. What did he tell you, or what did you learn while

00467

1 you were there, as to what "chronic bronchitis" meant?

2 A. He had looked at my records and seen that I had
3 been in previously for infection in my lungs, and told me
4 that his opinion was it was from smoking, and if I
5 continued to smoke, that I would continue to have chronic
6 bronchitis.

7 Q. How did he describe what he said saw in your
8 lungs?

9 A. He didn't see in my lungs.

10 MR. BARRON: Okay. Could you read her previous
11 answer back? I missed the word she used.

12 THE WITNESS: Records. Records. He had looked at
13 my records, they were right there.

14 MR. BARRON: Q. What did he tell you in the
15 records made him think that you had had something in the
16 past that related to this chronic bronchitis?

17 A. It must have been written down in -- in my medical
18 records. He asked -- I had been -- he asked me if I had
19 been sick earlier in the year, you know -- he asked me,
20 does this happen often, that you get bad colds or, you
21 know, get -- get this way?

22 And I said back in December I was -- I was all
23 congested also.

24 Q. Well, here you are -- here you are and you are
25 having this -- and I am not trying to quote you here -- but

00468

1 very severe pain, were you not?

2 A. Yes.

3 Q. In fact, it was excruciating?

4 A. It was very painful.

5 Q. And you believed that there was something wrong
6 with what was happening inside you to cause the pain. It
7 wasn't coming from something all of a sudden outside?

8 A. I had a cough, that's why I went to the doctor.

9 Q. So you go to the doctor. And what does he tell
10 you about what it is, other than the fact that smoking is
11 causing it?

12 A. He just explained to me that smoking causes
13 bronchitis in people.

14 Q. Did you know what bronchitis was?

15 A. Not really.

16 Q. Did he explain it to you, try to tell you a little
17 bit about what it was?

18 A. I can't remember in detail, but he -- he told me
19 that if I kept smoking I would have more of these episodes.
20 We've been here already.

21 Q. Well -- but I'm not sure what he's told you yet.
22 You go to a doctor, you've got excruciating pain, he says
23 you've got chronic bronchitis. Have you ever heard the
24 word "chronic bronchitis" before he said that?

25 A. I don't know.

00469

1 Q. And didn't he either tell you, or you asked,
2 "Golly, what is it? What do you mean chronic bronchitis?
3 What is going on? What is it? I'm in terrible pain,"
4 something along those lines to try to find out?

5 A. He didn't go into detail -- medical detail, if
6 that's what you are trying to get at.

7 Q. Did he go into --

8 A. I told you, I went in there to seek medical care
9 and he put me on antibiotics. And he told me what he told
10 me, and he told me if I continued to smoke I would have
11 more of these episodes. This is what I remember.

12 Q. Didn't you learn -- without the exact words here
13 being exact here, didn't you learn that the smoking had
14 been causing you some damage to some parts of your body
15 like the lungs or the tube that went down to the lungs?

16 A. He only told me smoking causes the chronic
17 bronchitis, that if I continued to smoke I would get it
18 again. This is what I remember. I just told you that.

19 Q. And did you understand what part of your body was
20 being affected by the smoking to cause the chronic
21 bronchitis?

22 A. At that point my lungs hurt and I could not
23 breathe.

24 Q. So you understood he was talking about your lungs
25 as having this problem?

00470

1 A. Yes. They were what was infected. That's why I
2 went to the doctor. Isn't that what we are talking about?

3 Q. I think so.

4 A. Okay.

5 Q. And you understood that, therefore, somehow there
6 was some harm going on to your lungs at this point?

7 A. Obviously. I couldn't breathe.

8 Q. And it was appreciable because it hurt like the
9 dickens?

10 A. Worse.

11 Q. Okay. And -- and you believed what the doctor
12 said as to what was causing it, isn't that true?

13 A. Yes.

14 Q. Now -- and then you believed him so you followed
15 his advice?

16 A. I couldn't smoke if I wanted to. I couldn't
17 smoke. It was -- I was doing good to breathe.

18 Q. And so you had that as the time when you didn't
19 smoke and began the effort to quit again, correct?

20 A. Actually, when I left the office, I lit up a
21 cigarette in the car, and I think I maybe got a couple
22 puffs off of it by the time I got across the street, but it
23 was put out because I couldn't -- couldn't breath --

24 Q. And you then went ahead with the effort to quit or
25 stop smoking?

00471

1 A. I smoked one more cigarette.

2 Q. How long --

3 A. I believe it was one more cigarette.

4 Q. How long after?

5 A. That was that night.

6 Q. And after that, then, you --

7 A. No more.

8 Q. -- didn't smoke again?

9 A. No.

10 Q. Would you compare to me how you felt physically
11 and emotionally in the effort to quit smoking the second

12 time when compared with the first time? In other words,
13 was there any difference at all; and if so, what was the
14 difference?

15 A. Yes. There was a difference, because I was also
16 on -- I was on medication. They had me on a cough syrup.

17 MS. CHABER: Codeine.

18 THE WITNESS: -- codeine, so I slept a lot. In
19 fact,, I about literally slept for three or four days,
20 because I had been so sick and that it relieved the pain
21 and I was able to breath better and -- so I -- I pretty
22 well slept through the worst of what I had gone through
23 before. I was fortunate, I guess, that I was on the
24 medication.

25 MR. BARRON: Q. And then following that period
00472

1 when you were on -- this sleeping period because of your
2 condition and the medications, how would you compare how
3 you felt physically and emotionally in this nonsmoking
4 effort that you were smoking, compared with the other
5 time that you were serious about it and lasted two weeks or
6 so?

7 A. In compared with the other time, I felt more
8 positive because I never, ever wanted to feel that pain
9 again. And I was proud of myself for not smoking.

10 Q. How would you compare the pain that you were
11 feeling from this chronic bronchitis compared with child
12 delivery?

13 A. That's two difficult pains you are talking about.

14 Q. And I have never gone through either. I am just
15 trying to -- it's probably not important.

16 It was -- it certainly was very painful, the
17 chronic bronchitis, excruciating and severe, is that true?

18 A. Yes.

19 Q. And how long a time was it excruciating and
20 severe, did it remain so even after you took the pain
21 medication?

22 A. It -- it was lessened after taking the pain
23 medication. And as the antibiotics started working, of
24 course, the symptoms went away.

25 Q. So how did you feel, then, following the time when
00473

1 you slept a lot up to the time that you were diagnosed with
2 lung cancer?

3 A. I still craved cigarettes. My -- I still wanted
4 to smoke, but I was determined not to. And at this point I
5 had my children and my husband and my family, we all helped
6 each other. It was a family effort.

7 MR. BARRON: Do you want to take a break for a
8 moment or for more than a moment?

9 MS. CHABER: Do you want to keep going or do you
10 want to take a break?

11 THE WITNESS: I'm fine.

12 MR. BARRON: Do you want to go to on, is that what
13 you'd like or just keep going --

14 MS. CHABER: Just keep going. She needs one right
15 now.

16 MR. BARRON: I kind of sensed --

17 MS. CHABER: Lets take a little break.

18 VIDEO OPERATOR: Going off the record. The time
19 is 4:33.

20 (Recess taken from 4:33 to 4:52.)

21 VIDEO OPERATOR: We are back on the record. The
22 time is 4:52.

23 MR. BARRON: Q. I just have a couple follow-up
24 questions on this circumstance and time frame we were
25 talking about when we had a recess a moment ago, the

00474

1 February '98 and immediate period thereafter time frame.

2 Was it also recommended to you by any doctor or
3 health care provider that in order to assist you with this
4 effort to quit, you ought to use something called Zyban,
5 Z-Y B-A-N, and/or nicotine gum?

6 A. The doctor suggested that -- that if -- if -- it
7 was new and that it was available, but he didn't tell me I
8 should take it. He just -- he did mention it. I do
9 remember him mentioning it.

10 Q. Did you try either?

11 A. No.

12 Q. Did you do anything in your effort to make your
13 attempt to quit successful, in addition or different to
14 what you had done the first time that you made a serious
15 attempt back when you and Leonard did it?

16 A. Only that I was on medication and -- and -- and
17 that it -- it kind of paved the first three or four days
18 for me that I slept through withdrawal symptoms.

19 Q. What about the cigarettes themselves, were they
20 thrown away this time in -- or after February of '98?

21 A. There was a carton of cigarettes unopened of mine
22 that I never opened.

23 Q. That remained in the household?

24 A. Yes, they were there.

25 Q. For a period of time?

00475

1 A. I don't know how long, but they were there.

2 Q. And I apologize if you've cleared this up before
3 or discussed it before, but did Leonard stop at the same
4 time or same day that you did in this February episode?

5 A. No.

6 Q. Did he stop some time after you did?

7 A. Yes.

8 Q. How long after?

9 A. He had came home from work, and I had told him to
10 get away from me, I didn't want to smell anything that had
11 anything to do with cigarettes.

12 Q. How many days was this after you had stopped
13 smoking that this occurrence took place?

14 A. That was the next morning --

15 Q. Okay.

16 A. -- after I had seen the doctor. I mean, he came
17 home from work, it was the next -- the next day that he had
18 came home from work that I said that to him.

19 Q. So this is during the period that you were home
20 still sleeping a lot and under medication?

21 A. Yes.

22 Q. And then that request on your part led him to say
23 he would stop smoking, and then he went ahead and tried and
24 succeeded?

25 A. Yes. He quit the next day. He stopped. That's

00476

1 when he did his part.

2 Q. And did Leonard, to your knowledge, do anything
3 different or additional in his effort to quit smoking this
4 time in February than he had in either of the two other
5 times?

6 A. Yes, he did.

7 Q. What did he do differently or additionally?

8 A. He wore the patch, the nicotine patch and he -- he
9 wore one patch -- the same patch for three days, and then
10 stuck it on his mixer.

11 Q. Is this a patch he acquired from off the shelf, or
12 did he get it from a physician or a health care person?

13 A. Actually, he got it from a co-worker who had
14 bought them for themselves and the guy was unsuccessful
15 with them and -- and gave what was left to Leonard.

16 Q. Other than that, did Leonard do anything different
17 or additional in this effort in February of '98 to stop
18 smoking compared with what, you know, he had done on the
19 other two occasions?

20 A. That's -- that's it, was the -- that patch, that
21 I -- that I know of.

22 Q. So he didn't go to any clinic or seek any
23 counseling or go to any doctor, or anything like that, so
24 far as you are know?

25 A. In fact,, he thought I had used the patch, but I
00477

1 didn't, and that's why he said he wasn't going to be a baby
2 and -- and have to wean himself off of the nicotine
3 again from the patches. That's why I didn't use it. I
4 chose to go cold turkey and -- and -- because I was afraid
5 I would not be successful because of -- the patch had
6 nicotine in it, I -- you know, I wanted a clean break.

7 Q. Switching subjects again, if I could. There was a
8 time when you, for some period worked outside of the home
9 as a maid or a housekeeping person, is that correct?

10 A. Yes.

11 Q. Okay.

12 A. Not while I was married with Leonard.

13 Q. No. I meant working outside the home because,
14 frankly, women who are at home and have responsibilities
15 work, so I was just talking about working outside the home.

16 A. Okay.

17 Q. Okay. No. And I was changing subjects and
18 changing time frames and all of that.

19 A. Boy, are you.

20 Q. I know.

21 A. Okay.

22 Q. That's why I tried to let you know that's what I
23 was doing.

24 A. Okay.

25 Q. And actually, my next question is, when was it
00478

1 that you first started to do that kind of work outside the
2 home?

3 A. Maid -- maid work?

4 Q. Yes.

5 A. That was, I think, my first kind of work was at --
6 I think that was -- when did I do it? Motel 6 was my first
7 maid job, I think, only because it didn't take any kind of
8 special training and the jobs were always available.

9 Q. To try to put it into a time frame, was this
10 before or after you graduated from high school?

11 A. After.

12 Q. Was it before or after you entered the trucking
13 program at Oxnard Junior College?

14 A. Before.

15 Q. And did you do any such work anywhere else but
16 Motel 6 before you went to Oxnard Junior College and the
17 trucking program?

18 A. Yes.

19 Q. Where else?

20 A. Hotel in -- in Ventura and Los Padres Inn. I
21 worked while I went to school -- not high school, but truck
22 driving.

23 Q. At any of those locations, did you receive any
24 instruction concerning any of the products that you were
25 going to use or might use in your job assignment?

00479

1 A. I don't -- what do you mean?

2 Q. Well --

3 A. Instruction on --

4 Q. I am trying to distinguish between --

5 A. What products?

6 Q. I suspect that when you are on the job somebody
7 says, you know, these are the rooms I want you to deal deal
8 with, or this is the section of the lobby that I'd like you
9 to deal with, and give you some instructions.

10 But I'm trying to set aside that, and specifically
11 limit it to any discussion or instructions about what type
12 of products to use as you did your work.

13 A. Only that you used the window cleaners on the
14 window, and the glass and -- and -- and the -- the toilet
15 bowl cleaner in the toilet.

16 Q. Were you requested, or were you ordered in any way
17 to, for example, wear gloves?

18 A. No.

19 Q. Were you ordered or requested to read any warnings
20 or product-use information that might be on the products
21 themselves?

22 A. No, not that I remember.

23 Q. Did you ever do that on your own?

24 A. No.

25 Q. Did you use some products that you know had some

00480

1 information on them concerning warnings about how to use
2 them, or warnings about how they could cause any injury or
3 damage?

4 MS. CHABER: Calls for speculation. She said she
5 didn't read them.

6 JUSTICE DOSSE: Sustained.

7 MR. BARRON: Q. Okay. Just if I can take it one
8 step. I'm not limiting to you, in this answer, reading the
9 whole information on such products, if there was any, or
10 trying to tell me right now if you read anything, what it
11 said.

12 I'm only asking for, at this point, whether when
13 you were working, you ever saw or understood, just from the
14 kind of product you were using, that on the product itself
15 somewhere there was some information that was a warning
16 about the product?

17 MS. CHABER: Calls for speculation.

18 JUSTICE DOSSE: Overruled.

19 THE WITNESS: To be honest, the bottles were
20 unmarked pink stuff, blue stuff.

21 MR. BARRON: Q. Everywhere you worked --

22 A. That was on the maid carts.

23 Q. -- they were unmarked?

24 A. Yes. It didn't have anything on it.

25 Q. Did you know what was in them?

00481

1 A. Yeah. One was for cleaning glass, and the other
2 one was for squirting in the bathtub and wiping out with
3 towels.

4 Q. Now, as time went by, we know that you married and
5 had some youngsters, correct?

6 A. Yes.

7 Q. And during that time, were you the one primarily
8 responsible for maintaining the house, in terms of using
9 products, if you had any, for cleaning?

10 A. Yes.

11 Q. Was there ever a time where you became aware or
12 believed that those products had on them any information
13 that included any warnings about the products?

14 A. I suppose.

15 MS. CHABER: Don't suppose. That's not what he's
16 asking.

17 THE WITNESS: Well, I have seen, you know, bleach,
18 you don't mix -- I mean, you don't mix bleach and ammonia.
19 Is that what you are getting at? I --

20 MR. BARRON: Q. Have you ever, in your whole
21 life, for example, used a product that is supposed to help
22 with unclogging a drain?

23 A. No, not that I am -- not that I remember using.

24 My dad is a plumber.

25 Q. Have you ever had, in the household, to your

00482

1 knowledge, some products that contained on them any labels
2 that included any warnings, such as "keep out of the reach
3 of the children," or, "do not swallow," or "if swallowed,
4 do not induce vomiting," things of that kind?

5 A. I'm sure I do, and everyone does in their home.

6 Q. Did you ever make an effort to keep those
7 products, that might cause injury or damage to youngsters,
8 out of the reach of your youngsters?

9 A. Yeah. It's called child locks on the doors.

10 Q. And in order to determine what to put in those
11 cabinets that had the child-lock doors, you had to take a
12 look at what you had around the house and pick out those
13 that might cause some injury or damage, is that correct?

14 A. I don't pick out things. There's -- there's other
15 things that can harm them, also. You could have marbles on
16 the floor. Anything they can choke on.

17 I don't go pick and choose through the house what
18 I am going to hide from the kids.

19 Q. Well, did you --

20 A. I don't know --

21 Q. Did you put any products away in what you call
22 child-proof locks or doors at any time so that your kids
23 would not get into them?

24 A. Well, of course, yes.

25 Q. Okay. What kinds of things did you put there?

00483

1 A. Household cleaners that I used. We've been here.

2 Q. What else, if anything?

3 A. Dish soap?

4 Q. Pardon?

5 A. Stuff. Anything that I don't want them to get
6 into, I put up.

7 Q. Anything else?

8 A. You want me to name everything in my house that's
9 in a tall cup board or -- or under my sink, is this where
10 we are going?

11 Q. Maybe not everything, but I'd like some more
12 examples that you can think of that you recognized as
13 posing a potential danger to your youngsters.

14 A. That's anything that I wouldn't want my children

15 to get into that. That -- that would be food, even, that
16 they could choke on.

17 You want me to -- anything -- under my sink right
18 now, I have -- there is a can of oven cleaner, which I have
19 never used because Leonard bought it and I -- I wouldn't
20 use it. And there is a can of -- not a can -- a -- a spray
21 bottle of -- of antibacterial stuff in the kitchen, stuff
22 like that is -- is in there.

23 Q. And it's in there in a way contained by your locks
24 that it is, in effect, child-proof?

25 A. I hope so.

00484

1 Q. And what made you think that the antibacterial
2 spray or material or product, was something that you ought
3 to put there because it posed a risk to kids?

4 A. Well, they don't need to be in it. That's my job.
5 To mess with it, anyway. Excuse me.

6 Q. Have you ever looked at the label of the bacterial
7 spray to see if it were misused in some way or gotten ahold
8 of by a youngster in some way, it might pose a risk to
9 them?

10 A. No. I just read how long to spray it to kill the
11 bacteria.

12 I don't know where this is going, what it has to
13 do with smoking.

14 Q. Have you ever, again, to your recollection,
15 actually looked at any things that were on a product, like
16 a product label, and specifically looked at any information
17 that was called a warning or that, in effect, was a warning
18 of some kind about a health risk, if it were misused or
19 used in a certain way?

20 A. Specifically, I can't tell you what I've read.

21 Q. Have you on occasions used products where you have
22 read the directions before using them?

23 A. Well, of course.

24 Q. And was one of your purposes of doing that, was
25 that if there was a risk or danger indicated with it, not

00485

1 doing it the correct way, you would avoid encountering that
2 risk or danger?

3 A. You just asked me if I read the directions.

4 Q. Yes, I did.

5 A. What do directions have to do with risk or danger?

6 Q. Have you ever used any fertilizers or weed killers
7 or pesticides, either in the garden or around the home?

8 A. I don't use weed killer.

9 Q. Pesticides?

10 A. I have used ant spray that they sell in the
11 grocery store.

12 Q. And before using that ant spray, did you notice
13 whether there was anything on the box or the can or the
14 container that had the spray --

15 A. No.

16 Q. Did you have a understanding as to whether, if the
17 pesticide was not used as recommended, the pesticide's use
18 might cause some sickness illness or injury?

19 A. No. They sell it to kill ants.

20 Q. You mentioned in answering your lawyer's question,
21 or questions, that -- and then also I think with me, that
22 there were times when you'd smoke while you were having
23 coffee?

24 A. Yes.

25 Q. When did you become a coffee drinker?

00486

1 A. I think when I lived in Virginia.
2 Q. And was there a time where you became a coffee
3 drinker that you would have at least one cup a day?
4 A. Yes.
5 Q. And when was that?
6 A. In the morning.
7 Q. By what year, or where were you when you became a
8 coffee drinker where you'd have at least one?
9 A. I don't know. That's -- I have no idea.
10 Q. And if a question were asked, like you sometimes
11 see on a medical record, like "How many cups of coffee do
12 you drink a day," what would you say in response to that?
13 MS. CHABER: Now?
14 MS. CHABER: It's vague as to time.
15 JUSTICE DOSSE: Sustained.
16 MR. BARRON: Q. In the time you were in
17 Virginia, what would you have said?

18 A. I don't know what I would have said, because I
19 don't know -- I don't recall how much I -- how much coffee
20 I drank then.

21 Q. By 1980, what would you have said?

22 A. 1980? I don't know.

23 Q. You don't know how many cups of coffee you would
24 typically drink?

25 A. You are talking almost 20 years ago. I don't know

00487

1 how much coffee I was drinking 20 years ago in the morning.

2 Q. Mid 1980s?

3 A. I don't -- I don't know.

4 Q. 1990?

5 A. That's easier. Three to five, all day long.

6 Q. 1996?

7 A. Probably about the same.

8 Q. Did you ever try not having coffee for any
9 substantial number of days?

10 A. Yes, I did.

11 Q. And how did you feel physically and emotionally
12 when you tried that?

13 A. I had a headache.

14 Q. Mild, moderate, severe, or what?

15 A. I would say moderate. A moderate headache.

16 Q. Only one?

17 A. No.

18 Q. How many?

19 A. Probably lasted two, three days.

20 Q. Did it affect your degree of irritability, going
21 without coffee?

22 A. No.

23 Q. Did you notice any personality change at all?

24 A. I don't remember.

25 Q. Did anybody else indicate that they noticed any

00488

1 personality change?

2 A. I don't remember.

3 Q. Did you feel inside, in terms of your temperament,
4 just like you did when you were drinking coffee, or did you
5 notice any change?

6 A. I don't -- I just -- I don't remember.

7 Q. You've heard other people say that they have felt
8 their temperament change when they have stopped drinking
9 coffee, is that correct?

10 A. I just heard you say it.

11 Q. Am I the only one you've ever heard that from?
12 A. It's not something I pay attention to. It's not a
13 big topic around my house.
14 Q. I wasn't just limiting it to your house. Have you
15 ever heard anybody say anything like that?
16 A. I have heard people say that they had a headache
17 when they have quit drinking coffee.
18 Q. You also quit alcohol at some point, did you not?
19 A. Yes.
20 Q. When was that?
21 A. It was about 11 and a half years ago. 1988.
22 Q. I'm sorry. Let me go back a minute to the coffee.
23 Did you only try to quit coffee one time, or was there more
24 than one time that you did this?
25 A. Just the one time. That was when I had the rapid
00489
1 heart beat and I had quit -- I drink caffeine now, but I
2 had stopped for awhile. The doctor thought it would help,
3 and it did.
4 Q. And how long did you stop the coffee drinking?
5 A. You know what? I'm not sure on that. I can't
6 say.
7 Q. Fair enough.
8 Do you have any reasonable estimate to give or
9 would --
10 A. No. I gradually went back to drinking coffee.
11 Q. You quit alcohol in 1988?
12 A. Yes.
13 Q. And did you ever resume?
14 A. No.
15 Q. And what was your level of drinking in the last
16 year or so up till the time that you quit alcohol in 1988?
17 MS. CHABER: I would object, your Honor. I think
18 it's an invasion of privacy, it's irrelevant and it's
19 remote. We are talking 11 and a half years ago. There's
20 no medical evidence or proof, that I'm aware of, that it
21 would be associated with her cancer or anything else.
22 JUSTICE DOSSE: Do you want to respond?
23 MR. BARRON: Yes,. It is probative, I believe, or
24 could be, and I don't know the answer yet, to the question
25 of one's ability to quit a habit or practice that one has
00490
1 developed.
2 And in order to determine whether one can do that,
3 you have to know something about how devoted one is to the
4 activity in order to evaluate one's ability to quit under
5 those circumstances.
6 MS. CHABER: I think we have Evidence Code
7 Sections 787 and 1101 problems here, where we are trying to
8 use instances of conduct, and in some other setting, in
9 order to prove conduct in this particular setting, that is,
10 as to cigarettes, and I think under both those sections
11 this would be inadmissible.
12 JUSTICE DOSSE: Anything further on that?
13 MR. BARRON: Only that the sections that she cited
14 I don't think relate to the issue of not trying to prove
15 conduct on a certain occasion by proving bad conduct or
16 conduct on a past occasion. That's not the purpose of my
17 inquiry. This is discovery, in addition, I would add.
18 It's not trial.
19 JUSTICE DOSSE: All right. The objection is
20 overruled.
21 MS. CHABER: On the latter ground, your Honor, on

22 the discovery ground?

23 JUSTICE DOSSE: Yes.

24 MS. CHABER: Thank you.

25 THE WITNESS: What was --

00491

1 MR. BARRON: Q. I think the question was: In
2 the last year or so before this time in 1988 when you give
3 up alcohol, what was your alcohol consumption like?

4 A. It varied. Sometimes I had a couple beers a day,
5 and, you know, sometimes it was a six pack or a 12 pack on
6 a weekend.

7 Q. Did you feel that you were physically or
8 emotionally attached in any way to the alcohol when you
9 went to give it up in 1988, so that you were trying to give
10 up a -- a habit or something that would take a little bit
11 of will power to do?

12 A. I --

13 MS. CHABER: Vague and ambiguous as to "attached."
14 I really didn't understand the question.

15 JUSTICE DOSSE: Overruled.

16 Do you understand the question?

17 THE WITNESS: I -- I think he's trying to ask me
18 how hard it was to quit drinking, and it was easy. That
19 was easy to answer.

20 MR. BARRON: Q. And you did that for, among
21 other reasons, your health, correct?

22 A. I did that because we chose to have a family and
23 we wanted to improve our lifestyle and -- and, you know --

24 MS. CHABER: Be sober.

25 THE WITNESS: Be sober.

00492

1 MR. BARRON: Q. So my question again was, you
2 did that for at least a reason of your own health, is that
3 correct?

4 A. I did it so that I could have a family with
5 children. I did not want to drink any more. It was a
6 choice I made, a personal choice I made that I did not want
7 to consume alcohol any more.

8 Q. Was one of the reasons why you made the choice
9 that you did in 1988 to stop drinking, that you wanted
10 to --

11 A. It was to have a family. Me and my husband wanted
12 to have children. I answered your question.

13 Q. Well, I understand that you are trying to, but I'm
14 asking questions because I'm trying to see the connection
15 between that and having a family.

16 And I'm asking a question that's very specific,
17 which is -- and it can either be "yes" or "no" or you don't
18 know, it seems to me.

19 The question again is: Is one of the reasons why
20 you gave up drinking alcohol when you did in 1988 was that
21 you were considering your own personal health?

22 A. Alcohol alters your thinking and we wanted to
23 raise a family. We chose to live sober so that we could
24 raise children in an alcohol-free home.

25 Q. So are you saying that --

00493

1 A. I don't --

2 Q. -- that your personal health was not a
3 consideration, or one of the reasons why you elected to
4 stop drinking when you did in 1988?

5 A. I wasn't unhealthy from drinking, so personal
6 health -- it was a choice I made.

7 JUSTICE DOSSE: Do you want to renew your
8 objection?
9 MS. CHABER: I'd like renew my objection.
10 JUSTICE DOSSE: Anything further on that?
11 MR. BARRON: No. I'm going to move on, anyway.
12 JUSTICE DOSSE: All right. The objection would be
13 sustained at this point.

14 MR. BARRON: Your Honor, I don't mean to come up
15 against a ruling, but let me just try this. If you think
16 you've ruled on this, that's fine.

17 Q. But when you say to have a family was one of the
18 considerations or reasons for you deciding to stop drinking
19 when you did in 1988, that were you to go on and become
20 pregnant to have children, it would be better for your
21 pregnancy, or better for your child who was to be born, not
22 to have you con assuming alcohol during your pregnancy?

23 A. It would be better as a -- a lifestyle in -- in
24 general to be sober. That's my answer.

25 Q. You were not thinking of --

00494

1 A. Specifics.

2 Q. -- actually physically improving your body at the
3 time of pregnancy or improving the child that would be in
4 your body during the pregnancy, is that correct?

5 MS. CHABER: I am going to object, your Honor,
6 this has been asked, answered.

7 JUSTICE DOSSE: Sustained.

8 MR. BARRON: Q. I want to change the subject,
9 and I am saying that so you can mentally make the shift.

10 I'd like to talk about some of your relatives for
11 a moment. Okay? Linda Whitaker is related to you, how?

12 A. If I --

13 Q. Or was related to you how?

14 A. If you are talking about my -- my dad's mother.

15 Q. Did Linda Whitaker die in March of 1973?

16 A. I guess. I mean, I'm not -- I don't know the
17 exact date by memory.

18 Q. Did she -- did she die in the early '70s some
19 time, to your recollection?

20 A. Yes.

21 Q. And -- I'm sorry -- she was your grandmother on
22 your father's side?

23 A. Yes.

24 Q. And was she a smoker?

25 A. Not that I know of. I never met her.

00495

1 Q. Did you ever learn what the cause of her death
2 was?

3 A. Yes.

4 Q. What was your understanding?

5 A. Well --

6 MS. CHABER: They have the death certificate. We
7 gave it to them.

8 THE WITNESS: Yes.

9 MR. BARRON: Q. Well, I am asking for your
10 understanding because it may not be the same as a death
11 certificate. You may not know about it, that's all?

12 THE WITNESS: Well, I got it from the death
13 certificate.

14 MR. BARRON: Q. Okay. I didn't know that until
15 you told me.

16 So you did not know from what she died until you
17 saw the death certificate?

18 A. I had been told that she had, I think it was mouth
19 cancer.

20 Q. A relative of yours was William Whitaker?

21 A. That's my dad's father, if it's the William
22 Whitaker you are speaking of.

23 Q. And he passed away in 1952, I am looking at here.

24 Not holding you to a specific date, would that be the one
25 you are thinking of who passed away in the early 1950s?

00496

1 A. Yes.

2 Q. And was he a smoker?

3 A. I was told he smoked a pipe.

4 Q. And did you ever learn from what he died?

5 A. Yes.

6 Q. And when did you learn that?

7 A. From death certificates.

8 Q. When?

9 A. Whenever I got it. When I was doing my genealogy.

10 I don't remember when I actually received his death certain
11 kit in the mail, is that what you are asking?

12 Q. Are you talking about some time recently when
13 you've been involved with this lawsuit?

14 A. No, no.

15 Q. Well --

16 A. Not on him, but what -- what I am saying is, I
17 don't remember when I ordered his death certificate and got
18 his death certificate in the mail, not for this lawsuit,
19 for doing my -- for doing genealogy --

20 Q. Okay.

21 A. -- research.

22 Q. And I don't know when you did that. I don't think
23 that's been established yet.

24 So can you give me your best recollection as to
25 when it was that you did that?

00497

1 A. In the last seven years.

2 Q. And when you got his death certificate, did you
3 look to see from what he died, what the cause of death was
4 that was listed?

5 A. I think it just says carcinoma. I'm -- I'm not
6 exactly sure exactly what it says.

7 Q. And when you saw that, did you know what that was?

8 A. Carcinoma?

9 Q. Yes.

10 A. Cancer.

11 Q. And that's what you knew when you saw the death
12 certificate?

13 A. Yes.

14 Q. Did you ever ask whether he was a smoker or not?

15 A. A smoker?

16 Q. Yes.

17 A. No.

18 Q. Of cigarettes.

19 A. No.

20 Q. But you knew he was, you thought a smoker of
21 pipes?

22 A. Yeah. Because my dad had told me a story about
23 packing his pipe full of match heads and then handing him
24 the lighter -- the match to light it.

25 Q. Now, I'm not going to try to pronounce this

00498

1 because I would probably mispronounce it and I don't want
2 to do that. I-N-E-S, is the first name.

3 A. Ines.
4 Q. That's what I thought. I would have been right on
5 that.
6 A. Depending whether you are from Texas.
7 Q. And H-O-X-S-I-E.
8 A. Hoxsie.
9 Q. And how is she related to you?
10 A. She is -- was my grandmother. My mother's mother.
11 Q. And she passed way, I'm looking at the date of
12 January of 1995. Does that sound about right?
13 A. Yes.
14 Q. Do you know from what she passed away?
15 A. Only recently. Nobody really knew until recently
16 when I acquired her death certificate.
17 Q. When you say recently," what do you mean?
18 A. Recently, within the last two weeks, because you
19 guys requested this stuff.
20 Q. Ray L. Roberson is related to you?
21 A. He was my grandfather, yes.
22 Q. I have here that he passed away in March of 1968.
23 Does that sound right to you?
24 A. Yes.
25 Q. And did you ever learn what the cause of his death
00499
1 was?
2 A. Yes recently when I received his death certificate
3 within days of my grandmother's.
4 Q. Was he a smoker?
5 A. I believe so.
6 Q. Of cigarettes?
7 A. Yes.
8 Q. Roy Whitaker is related to you, is he?
9 A. My dad's -- he was my dad's oldest brother.
10 Q. And it looks from what I am looking at, that he
11 passed away in July of 1977. Does that sound about right?
12 A. I -- I suppose. I'm not familiar with him.
13 Q. Was he a smoker?
14 A. I was told he smoked.
15 Q. Of cigarettes?
16 A. Yes.
17 Q. Do you know from what he died?
18 A. I -- I just learned since I've been here that he
19 died of lung cancer.
20 Q. When you say since you've been here, you mean the
21 last few weeks as part of --
22 A. No. Since I've been here in San Francisco, here
23 at this deposition, because the -- his death certificate
24 came in the mail while I was here.
25 Q. Mr. Grant Whitaker is related to you, also, and it
00500
1 looks like he is a paternal great uncle. Does that sound
2 right?
3 A. Yes.
4 Q. And it looks as if he passed away in 1939?
5 A. Yes.
6 Q. Does that sound correct?
7 A. Yes.
8 Q. Was he a smoker of cigarettes?
9 A. I have no idea. I never knew him, and I didn't
10 even know he existed.
11 Q. Until recently when you were looking at material
12 that was being gathered for this --
13 A. No. Until I found him when I was doing my

14 genealogy.

15 Q. Okay. That was that seven or eight years ago?

16 A. Yes. Within the last seven, eight years I've been
17 doing this.

18 Q. And did you acquire a death certificate for him as
19 you were doing this genealogy?

20 A. Yes.

21 Q. And it showed, did it, that he died of lung
22 cancer?

23 A. Yes.

24 Q. Do you know of any cousins of yours who are
25 cigarette smokers?

00501

1 A. Cousins?

2 Q. Yes. Or whoever have been.

3 A. Yes.

4 Q. Do you know of any who have quit smoking?

5 A. Cousins that quit smoking? I don't know.

6 Q. Before you were diagnosed with lung cancer in June
7 of 1998, other than what we've already just talked about in
8 terms of your knowledge of relatives and the cause of their
9 death, what relatives, if any, were you aware of who had
10 ever died of cancer?

11 A. Whoever died of cancer? I -- well, I knew that my
12 grandparents had, the two Whitakers.

13 Q. I wasn't asking you to go over what we went over.

14 A. Well, that's --

15 Q. And I don't mean to interrupt you. I just was
16 trying to save you the effort of -- and point out that
17 it's -- I'm only asking for anything other than what we
18 have already just talked about.

19 A. Any other relatives?

20 Q. Yes,. Do you know of any other relatives who have
21 ever died of cancer?

22 MS. CHABER: Other than the ones we've already
23 given them --

24 THE WITNESS: Not that I -- no.

25 Yes, there is my -- a cousin had breast cancer

00502

1 in -- she lived -- I believe she lived in Oregon. Her name
2 was Jane. I can't think of her last name. She's my dad's
3 first cousin, but it was breast cancer, I believe.

4 MR. BARRON: Do you want to take a break and keep
5 going, or what do you want to do? We can go another hour
6 or so, I think 45 minutes. We have gone -- I have lost
7 track of time.

8 MS. CHABER: We have been going only 40 minutes.

9 I don't know. Do you want to keep going, call it a day?

10 THE WITNESS: I guess. Get this over with.

11 MS. CHABER: I know. She wants to get this over
12 with.

13 MR. BARRON: Okay.

14 MS. CHABER: Let's keep going. I'm assuming
15 that --

16 JUSTICE DOSSE: No. That's fine with me. I mean,
17 is that --

18 THE WITNESS: I think we all want to get it over
19 with.

20 JUSTICE DOSSE: Do you think you have 40 minutes
21 left totally?

22 MR. BARRON: Forty minutes left totally?

23 MS. CHABER: Could we finish tonight? No. We are
24 on the record. Do you think it would be --

25 MR. BARRON: Yeah, it's possible, and -- it's
00503
1 possible. I just don't want to --
2 MS. CHABER: That we could finish night?
3 MR. BARRON: Yes. But also, what I can give you
4 is a guarantee that we'll finish tomorrow and --
5 MS. CHABER: Yeah. I --
6 MR. BARRON: Let me --
7 MS. CHABER: That we already have -- that promise,
8 I already got from you.
9 JUSTICE DOSSE: All right.
10 MR. BARRON: Well, I understand. What I am trying
11 to do is -- let me just be clear is, I don't know precisely
12 how much longer. I just want to take a look at a couple of
13 notes, and I'm leaving it really to you and the Judge. I'd
14 be happy to go forward.
15 And really, it's your client's and your choice. I
16 don't want to make this, you know, the march from Baton.
17 MR. BROWN: Too late.
18 THE WITNESS: Thank you. You beat me to it.
19 JUSTICE DOSSE: You are still on the record.
20 I have no objection. And it's up to your client.
21 THE WITNESS: I can stand another 40 minutes, if
22 that's what you can do it in.
23 MR. BARRON: And that's what you'd prefer?
24 THE WITNESS: I would rather get this over with.
25 MR. BARRON: Okay. Why don't we do this. Why
00504
1 don't we take five minutes or seven minutes, stretch, and I
2 will do my best to try to finish in that kind of a time
3 frame.
4 MS. CHABER: I have maybe four minutes of
5 re-direct.
6 THE WITNESS: I have four children who miss me
7 very much.
8 MR. BARRON: Okay. Fair enough. And I will do my
9 best and -- however, I do want to make sure that -- that
10 you are clear, that if you are getting tired --
11 THE WITNESS: I was tired a long time ago, sir.
12 MR. BARRON: Well, what I mean by that, I'm tired,
13 too.
14 THE WITNESS: Yes.
15 MR. BARRON: But I was going to say, tired to the
16 point where you don't think you are giving your best
17 answers, don't do me or you the disservice of doing that.
18 We'll come back finish up very briefly in the morning and
19 try to get you on an early flight, but I will try to
20 finish. Okay?
21 VIDEO OPERATOR: This is the end of tape 3, volume
22 3 in the deposition of Leslie Whiteley. Going off record.
23 The time is 5:40.
24 (Recess taken from 5:40 to 5:59.)
25 VIDEO OPERATOR: This is the start of tape 4 of
00505
1 volume 3 of the deposition of Leslie Whiteley. Going on
2 the record. The time is 5:59.
3 MR. BARRON: Q. Okay. Are you ready to proceed?
4 A. Yes.
5 Q. Okay. And I just want to make sure we all
6 understand that we are doing this because you would prefer
7 me trying to finish instead of coming back for a brief
8 session tomorrow. I believe I can do that. I think maybe
9 even I can get it done under the time estimate that I gave

10 before we recessed. I can't guanantee it, but I am going
11 to try.

12 But I want to emphasize that even though you
13 prefer to have us finish today, I don't want you to keep
14 going if you are having difficulty giving your best and
15 most accurate answers.

16 A. Okay.

17 Q. Okay? So you'll still have to be the one to let
18 me know. And if we have to come back for 10 or 15 minutes
19 tomorrow, we'll do that, and we'll still get you on an
20 early flight home. But I really think we can do it as long
21 as you are physically and mentally able. Okay?

22 A. Yes.

23 Q. All right. Speaking again of the first serious
24 attempt to quit smoking that you made at the suggestion of
25 Leonard, the one -- this was before your and his trip to
00506

1 Yosemite, at any time during the time that you had stopped
2 smoking and were attempting to quit, did anyone other than
3 Leonard, and anyone in your own household, know that you
4 were doing that?

5 A. The only other person in the household was my son
6 Troy.

7 Q. Okay. Anybody outside the household know that you
8 had made that effort while it was taking place?

9 A. Yes.

10 Q. Who else?

11 A. I believe my mother and my sister, Becky.

12 Q. Anyone else that you can think of?

13 A. No.

14 Q. Did anyone outside of your household, to your
15 knowledge, know that Leonard was making an attempt?

16 A. I would assume they knew he was quitting with me.

17 I --

18 Q. The same people?

19 A. Yes.

20 Q. Your mother and Becky?

21 A. Yes. And his mother may have known, also.

22 Q. You don't know that she did, you are just assuming
23 that she probably did?

24 A. Yes.

25 Q. The time in February of 1988 when you made your
00507

1 second serious attempt to quit related to this period when
2 you were --

3 A. '88.

4 Q. Did I misspeak? I apologize.

5 A. That's all right.

6 Q. What did I say?

7 A. You said '88. See, I'm -- I'm getting better at
8 my dates here.

9 Q. You are doing better right now than I am, aren't
10 you? I appreciate you correcting me.

11 A. Can you go on?

12 Q. Well, I'm going to go on and --

13 MS. CHABER: Whether he can or not.

14 MR. BARRON: Q. Whether I can or not.

15 A. I'm sorry.

16 Q. And I'm worried about you and not me, and I want
17 to accommodate you and I think we can do it, and I
18 appreciate -- and I'll invite your lawyer to, also, catch
19 me on misspeaking like that one date so we get an accurate
20 transcript, but thank you. Okay.

21 When in February of 1998 you and Leonard made this
22 serious attempt again to quit smoking, do you know of
23 anyone outside of your own household who knew that you or
24 he were making that effort?

25 A. My mother.

00508

1 Q. Anyone else?

2 A. I don't know. I don't recall. I don't recall
3 getting on the phone and announcing it to anybody.

4 Q. Now, you mentioned earlier in answering one of
5 your lawyer's questions, or questions, that when you were a
6 youngster your mother may have had good housekeeping
7 magazine around. Do I have this right, she may -- or Home
8 &Gardens, is it?

9 A. Something -- something of the sort. She may have.

10 Q. You are not sure?

11 A. I'm not sure of the exact title of a magazine.

12 Q. But a magazine of that kind?

13 A. Most likely.

14 Q. Did you, while you were still living in your mom's
15 house, and before you went off and got married, ever
16 subscribe to a magazine?

17 A. Myself?

18 Q. Yes.

19 A. Not that I -- I don't know.

20 Q. Did any of your brothers or sisters subscribe to a
21 magazine, to your knowledge, before you left the home when
22 you did to get married?

23 A. I don't -- I don't know.

24 Q. Was there any magazine that you can remember
25 around your household at any time with any regularity

00509

1 before you went off and got married for the first time in
2 1976, other than this magazine that your mother may have
3 had, that was like Good Housekeeping or Home & Gardens, or
4 whatever it might have been?

5 A. There was always National Geographics.

6 Q. Anything else that you can remember?

7 A. Not -- not specifically, but I do remember that
8 she had a lot of National Geographics.

9 Q. Now, after you married in the summer of 1976, all
10 the way more than 20 years later when you have been
11 diagnosed with cancer, was there ever a time during that
12 period of 20-plus years or so that you subscribed to a
13 magazine?

14 A. Yes.

15 Q. And when was the first time that you subscribed to
16 one?

17 A. I don't know.

18 Q. Can you put it into any time frame, as to where
19 you were living, or who your husband was, or anything like
20 that?

21 A. No. I -- I only recall receiving them when I was
22 with Leonard. That, I guess, is a time frame.

23 Q. Thank you.

24 And you used the word "them." Was there more than
25 one that you subscribed to at some point with Leonard?

00510

1 A. Yes.

2 Q. Could you list for me those that you subscribed
3 to?

4 A. Magazines?

5 Q. Yes.

6 A. Mother Earth News, Easy Rider. I believe Better
7 Hoomes & Gardens. And there was another one, Country
8 Folks, something of the sort.

9 Q. Have you completed your answer?

10 A. That I can remember.

11 Q. Yes.

12 A. That I can remember, yes, besides children's
13 magazines for my children.

14 Q. Can you place in time when you began to subscribe
15 to any of these any more specifically than you have, that
16 it was some time when you were married to Leonard?

17 A. No, not specifically.

18 Q. Before you were married in 1976 and left the home
19 with your husband eventually, at any time did your parents
20 subscribe to a newspaper?

21 A. I suppose they did, yes.

22 Q. You saw one around

23 A. Yes.

24 Q. But you yourself weren't inclined to read it
25 typically?

00511

1 A. I remember reading the newspaper, yes.

2 Q. What newspaper was it that was around the home?

3 A. Ojai Valley News when we lived in Ojai. And I
4 think it's the Ventura County Star Free Press.

5 Q. The last phrase, I didn't catch.

6 A. Ventura County Star Free Press.

7 Q. Thank you.

8 What about after you married in 1976 up until the
9 time over 20 years later when you've had your diagnosis,
10 during any of those periods, did you or your husband
11 subscribe to a newspaper?

12 A. Yes.

13 Q. Could you specifically as you can tell me what
14 newspapers and when?

15 A. The Ventura County Star, that newspaper is the one
16 I subscribed to.

17 Q. Any others that either you or a husband subscribed
18 to --

19 A. Not that I --

20 Q. -- during that 20 or 22-year period?

21 A. Not that I can recall.

22 Q. Before 1971, had there been any television program
23 that you were particularly attached to, to the point that
24 you were, from your standpoint, a regular watcher?

25 A. Attached to in 1971? I have no idea what was on

00512

1 TV then.

2 Q. Okay. The word "attached," may give you a certain
3 connotation that I don't want to have. Let me rephrase it
4 this way.

5 At any time, from the time you were born up to
6 1971, can you remember any television program that you
7 regularly watched or thought of yourself as being a regular
8 watcher?

9 A. Sheriff John.

10 Q. Any others?

11 A. To 1971, I don't know what was between there is
12 that -- I just would watch cartoons. I -- we watched
13 Sunday night Walt Disney.

14 We weren't -- I mostly spent all my time outside
15 as a child playing. We weren't big television watchers.

16 Q. In that same time frame, from whenever you were

17 old enough to remember starting to see any television, up
18 to 1971, did you ever watch the news on television?

19 A. I don't know.

20 Q. Did you ever listen to the news on the radio
21 during that same period?

22 A. In 1971?

23 Q. Not in 1971. At any time from the time you were
24 born all the way up to 1971.

25 A. I can't honestly answer that question. I don't

00513

1 remember specifically what I heard at any given time from a
2 radio.

3 Q. You would occasionally listen to the radio,
4 however?

5 A. I don't remember. Before 1971? I -- I -- I
6 didn't -- I don't know. I can't honestly answer that
7 question. I -- that's a long time ago that you want me to
8 specifically remember listening to a radio.

9 Q. If you can't, you can't.

10 A. I'm sure somebody had a radio on some time or
11 another in a car or wherever, but I couldn't tell you it
12 was on a Saturday in 1970, whatever.

13 Q. Now, after you were married in 1976, all the way
14 up to the time where you were diagnosed with cancer over 20
15 years later, was there ever a time where you became what
16 you thought as being a regular watcher of a TV program?

17 A. A regular watcher of a TV program?

18 Q. Yeah. Not meaning that you never missed a show,
19 but thought of yourself as being a person who generally
20 watched the show or tried to watch the show.

21 A. The only thing I can honestly say that I have been
22 an avid watcher of is All My Children.

23 Q. During that same period of time, all the way from
24 when you got married in 1976 up to the time over 20 years
25 later when you were diagnosed with cancer, did you ever

00514

1 watch the news on television?

2 A. I have watched the news on TV, yes.

3 Q. Did you tend to watch local news or national news
4 or both?

5 A. I -- I guess local and national. I am not -- I'm
6 not a big news person.

7 Q. Can you describe, as best you can, what was your
8 practice or involvement with news? In other words, you
9 said you are not regular -- or not a big news watcher. How
10 frequently would you watch it?

11 A. I -- I can't honestly answer that, because I don't
12 know how frequent -- frequently I watch the news.

13 Q. Did you have, if you were going to watch the news,
14 a national news broadcaster on TV that you tended to see
15 more than another?

16 A. No. I -- like I said, I specifically can't tell
17 you that I sat down and watched news as a routine. That
18 was not part of my routine. Even now, it's not.

19 Q. And I'm not suggesting sitting down watching it
20 from start to finish, but having either you turn it on or
21 your husband turn it on, seeing parts of it, hearing some
22 of it when you are in the kitchen, or anything like that.
23 Did you do that with any regularity at all in any of the
24 years from 1976 up to the time you were diagnosed with
25 cancer?

00515

1 A. Regularity?

2 Q. Well, again, you are trying to pick on a word.
3

4 A. Again, I never watched the news on a regular
5 basis, and I'm real selective on -- on whether I want to
6 hear good news or bad news, you know. I don't want to hear
7 about murderers and -- and -- and all that. So I -- it's
8 negative media, is not something I like to flood my mind
9 with.

10 Q. You mentioned, in answering one of your lawyer's
11 questions, that following the time that you were diagnosed
12 with cancer, you got involved in some way with the American
13 Cancer Society, is that correct?

14 A. Yes.

15 Q. And were there some other organizations that you
16 got involved with also following the time you were
17 diagnosed with cancer?

18 A. Other organizations, as in -- I sent away for
19 information from L Case.

20 Q. And what is that?

21 A. It's an organization for lung cancer patients and
22 their families.

23 Q. Any other organization or entity with which you
24 got involved following your diagnosis?

25 A. What's an "entity"? It sounds like Star Wars.

00516 Q. Yeah. It is a word that lawyers often use, judges

1 even often use it. It means an organization.

2 A. An organization?

3 Q. Yes.

4 A. No. I am not involved in any organization so to
5 speak, except that I volunteered my time for the American
6 Cancer Society.

7 Q. Before your diagnosis with lung cancer, had you
8 volunteered in the past at any time in your whole life with
9 any public service organization?

10 A. Maybe just at school and stuff. I -- I don't --
11 honestly thinking about it, any other public organization.

12 Q. Public service.

13 A. Not that I can think of right now.

14 Q. Like the American Cancer Society, or any other
15 health organization or --

16 A. Before I was diagnosed with cancer? No, not that
17 I can remember.

18 Q. Okay. Switching subjects again.

19 I want to ask you some questions about how you
20 actually smoked cigarettes. And I want to start with
21 Marlboros, because there may or may not have been a
22 difference, considering what brand you happened to be
23 smoking.

24 So when you smoked Marlboros, do you know
25 generally how many puffs you would take of each cigarette?

00517

1 A. No. I never counted. I don't think I was that
2 bored.

3 Q. Do you know how close to the end of the cigarette
4 you would smoke the Marlboros?

5 A. I don't know.

6 Q. Can you describe or show us with, for example, the
7 pen that your lawyer has next to her, how you would hold
8 the cigarette, meaning the Marlboro?

9 A. I don't know if it was a Marlboro how I held it,
10 but you'd hold a cigarette (indicating). I guess I'm used
11 to the 100s, huh?

12 Q. Now, you are tending to hold that --

13 A. You are asking me to do something that -- I just
14 picked this up and held it.

15 Q. I understand. And now, I want to --

16 MS. CHABER: Give me my pen back.

17 MR. BARRON: Q. -- ask you about Camel regulars.

18 Would your answers be any different for Camel regulars?

19 For example, do you know how many puffs of a Camel regular
20 you would take?

21 A. I have no idea.

22 Q. Do you know how close to the end of the cigarette
23 you smoked when you smoked the Camel regulars?

24 A. Not real close on those.

25 Q. And why was that?

00518

1 A. I'd get burned.

2 Q. And did you hold the Camel regulars any
3 differently than you just showed us on the video as to the
4 way you held the Marlboros?

5 A. I don't remember. I -- I couldn't honestly answer
6 that.

7 Q. Next, I believe in the order in which you smoked
8 them, were the Camel Lights, if I'm correct. Am I?

9 A. Yes.

10 Q. Do you know how many puffs you would take
11 generally of the Camel Lights --

12 A. No.

13 Q. -- if you smoked it to completion?

14 A. No.

15 Q. Do you know how close to the end you would smoke
16 the Camel Lights?

17 A. I don't remember.

18 Q. Did you hold the Camel Lights, to the best of your
19 recollection, in the same way that you held the Marlboros?

20 A. I suppose.

21 Q. Camel 100 Lights were the next cigarette in
22 chronology that you smoked, is that correct?

23 A. Yes.

24 Q. When you smoked the Camel Lights, do you know
25 generally how many puffs of each cigarette you took, if you

00519

1 smoked the cigarette to completion?

2 A. No, I don't. I never counted it.

3 Q. How close to the end of the Camel 100 Lights would
4 you smoke those, if you smoked them to completion?

5 A. Now, that I do remember. It was about this far
6 from the -- the filter (indicating) and I just (indicating)
7 put them out.

8 Q. To the best of your recollection, did you hold the
9 Camel Hundred Lights as you showed us you held the Marlboro
10 cigarette?

11 A. I suppose. I never paid any attention to how I
12 held a cigarette.

13 Q. You don't remember changing the way you held
14 cigarettes?

15 A. No.

16 Q. You know, whether -- I mean, there are some people
17 who cup the cigarette backwards in the movies, and Marlon
18 Brando or Humphrey Bogart would occasionally, when they
19 smoked, had certain styles.

20 A. That's before my time, guy.

21 Q. Okay. You've dated me now -- or I've dated
22 myself, and I apologize.

23 A. No, I didn't date you.

24 Q. That's a -- that's an example of good wit, and I
25 mean that sincerely.

00520

1 I've exposed my own age, I suppose, with your
2 help.

3 All I'm trying to get at is, you have seen people
4 have different styles in the way in which they held
5 cigarettes?

6 A. I -- I guess, yes.

7 Q. And you don't remember intentionally changing your
8 style from the way you showed me you held the Marlboros, is
9 that correct?

10 A. No. I -- I don't even remember how I -- you just
11 asked me to pick that up. I don't -- couldn't even tell
12 you what I looked like smoking, you know. Holding a
13 cigarette is not something you think about it.

14 Q. In those photographs you spoke about earlier that
15 shows you smoking or with a cigarette in your hand, and the
16 early ones especially when you thought you were 15 or 16 or
17 17, do you remember who it was that took those photographs?

18 A. Dean did. He took some. I'm not sure who took
19 all of them. My sister took one of them.

20 Q. Were your parents, or either one of them present,
21 when any of those photographs were taken?

22 A. Which photographs?

23 Q. You may look at the book again.

24 A. Yes.

25 Q. The early ones where you were younger and involved

00521

1 with smoking in the photograph.

2 A. No. Just me and my sister were here.

3 Q. Okay. You are looking at 3-A now?

4 A. Yes.

5 Q. Okay. And then 3-B?

6 A. Dean took this one.

7 Q. Okay.

8 A. And I suppose Dean took this one, since he's not
9 in the picture. This is -- did you want to go through
10 that?

11 Q. May I see that just for a moment, the book, and
12 then I'll hand it right back to you.

13 A. Yes.

14 Q. As we talked about earlier, I can't see all this
15 far over there. Let me show what you has been marked as
16 3-D, indicates that it was taken in November of 1976 and
17 you were 17.

18 A. Those were --

19 Q. And who took that one?

20 A. This one?

21 Q. No. The one on --

22 A. This one?

23 Q. Correct, on your left side, 3-D, it's labeled.

24 A. I'm not sure. That was taken in Hawaii. It could
25 have been taken by Dean or by somebody else in my family

00522

1 that was on vacation with us.

2 Q. Now, on the right-hand side, there's, I think,
3 3-E, and I think it indicates that it was taken when you
4 were 16 years old?

5 A. Yes.

6 Q. And who took that one?

7 A. Dean. I believe he did.

8 Q. When you received permission from your parents to

9 marry before you turned 18, did you and your parents
10 discuss at all whether it was advisable or not for you for
11 marry at that age?

12 A. No.

13 Q. You had to receive permission, I understood you to
14 say in answering your lawyer's question, and you had to
15 receive that permission from your parents?

16 A. Yes. She wrote a note for me to take with me when
17 I went to Virginia --

18 Q. Did --

19 A. -- giving me permission.

20 Q. Was there any talk at all between the two of you
21 as to whether you were old enough to make that decision, or
22 whether you seemed to be -- seemed to her to be mature
23 enough, or anything like that?

24 A. Her stand was that she would rather I do what I
25 thought would make me happy. Is that what you are after?

00523

1 That --

2 Q. It's what she said --

3 A. Yes.

4 Q. -- that's what I'd like to know.

5 A. Yes.

6 Q. Okay.

7 A. Can I shut these?

8 Q. Thank you for reminding me. Can I just look at
9 them for a minute and see if there are any others of those
10 early years? Yes, you may. And I'll hand them back to
11 you.

12 A. Thank you.

13 Q. You are welcome.

14 Have you been seen, diagnosed or treated for
15 medical conditions in your whole life only by doctors in
16 the Ventura County area?

17 A. No.

18 Q. Where else?

19 A. I -- I went to a scoliosis clinic in Norfolk,
20 Virginia, I believe that's where it was located.

21 And I -- I had gone to a -- the base doctor there
22 for -- I -- I was constipated really bad. And that's as
23 far as I can remember back there.

24 Q. Have you completed your answer for all the places
25 you were seen, other than Ventura County?

00524

1 A. I believe in Santa Maria I went to a clinic
2 because I had an infected ears.

3 Q. When was that? Not the precise date, but if you
4 could place it in terms of your activities or a time frame.

5 A. In the '80s, I -- some time.

6 Q. Do you remember the name of that clinic?

7 A. No, I don't.

8 Q. The place in Norfork -- Norfolk, Virginia, was
9 that associated with the Navy?

10 A. Yes.

11 Q. Was it an actual Naval facility?

12 A. Yes, it was.

13 Q. Do you know of any people who reside, meaning live
14 in San Francisco County, that you believe have information
15 in any way connected to your situation for which this
16 lawsuit has been brought?

17 A. San Francisco? What? What was the question
18 again? I --

19 Q. Do you -- yes. Do you know of anyone who lives in

20 San Francisco County that you think might have any
21 information that is connected to your lawsuit, the one we
22 are here today on?

23 A. I'm -- I don't know.

24 Q. You don't know of any?

25 A. I don't know. I -- lawsuit -- this lawsuit?

00525

1 Q. This is a lawsuit, yes.

2 A. I have a girlfriend who knows I'm here that lives
3 wherever Humphrey swam up the river. She knows I'm here
4 for a deposition.

5 Q. Other than that, anybody at all that you know of
6 that has any information that might relate, in your mind,
7 to this case that you have?

8 A. Here?

9 Q. That lives in San Francisco County.

10 A. My attorney.

11 Q. Other than that?

12 A. Not that I'm aware of.

13 MR. BARRON: All right. I am going to take off my
14 mike because I have no further questions at this time.
15 Thank you very much. And I appreciate your effort, and I
16 hope we can let you end for the day soon. It doesn't look
17 like anybody.

18 MS. CHABER: Somebody does.

19 MS. SINGAL: I just have one question.

20 JUSTICE DOSSE: Could you state your appearance?

21 EXAMINATION BY MS. SINGAL

22 MS. SINGAL: Sure. Sangeeta Singal, appearing for
23 certain named and served CCR defendants.

24 Q. Have you ever had pneumonia?

25 A. I don't know.

00526

1 Q. Have you ever been diagnosed as having pneumonia?

2 A. Specifically, I don't -- I can't honestly answer
3 that, that that was what I had. You would have to check my
4 medical records.

5 Q. Okay. But --

6 A. But I -- I can't -- what I am saying is verbally
7 now, I can't tell you yes, that's what I had; no, that's
8 not what I didn't have.

9 You would have to look at my medical records for a
10 truthful answer on that.

11 Q. Okay. And when you say that -- that's -- you
12 can't say that that was what you had or what you didn't
13 have, are you referring to a specific illness that you did
14 have?

15 A. You just asked me if I ever had pneumonia. That
16 is a specific illness, isn't it?

17 Q. Yes.

18 A. And I answered I don't know, you would have to
19 check my medical records.

20 MS. SINGAL: Okay. Thank you.

21 THE WITNESS: You are welcome.

22 JUSTICE DOSSE: Anything further?

23 MS. CHABER: I have like two minutes. Just switch
24 with me, just because I don't want her to have to turn --

25 MR. BARRON: Sure. Do you me to actually switch

00527

1 or just slide over?

2 MS. CHABER: You can just slide over.

3 MR. BARRON: Sure.

4 MS. CHABER: Very fast.

5 EXAMINATION BY MS. CHABER

6 MS. CHABER: Q. Leslie, by the time you
7 graduated high school, were you a regular cigarette smoker?

8 A. I would say yes.

9 Q. Did you smoke cigarettes every day by the time you
10 had graduated high school?

11 A. Yes.

12 Q. You were asked a number of questions about hearing
13 a tobacco company executive, or someone who you knew worked
14 for a tobacco company talking about cigarettes. Do you
15 remember -- it was about two days ago.

16 A. Yes.

17 Q. And the only specific incidents you could recall
18 was the 994 Congressional Hearings that you described --

19 MR. BARRON: Objection. Leading, suggestive.

20 MS. CHABER: Q. -- is that right?

21 JUSTICE DOSSE: Sustained.

22 MS. CHABER: Q. When you were asked about
23 specific incidences, did you recall any specific instances
24 of hearing somebody who said they were representing a
25 tobacco company talk about the safety or not safety of
00528

1 cigarettes?

2 MR. BARRON: Objection. Number one,
3 mischaracterizes the record and, therefore, lack of
4 foundation; and number two, leading and suggestive.

5 JUSTICE DOSSE: Overruled.

6 You can answer that question.

7 THE WITNESS: A specific --

8 MS. CHABER: Q. A specific time that you recall
9 actually hearing a -- someone indicating they were on
10 behalf of a tobacco company saying something about
11 cigarettes.

12 MR. BARRON: Objection. Now it's vague and
13 ambiguous, as well as the other objections I have.

14 JUSTICE DOSSE: Overruled.

15 THE WITNESS: You are asking me for a specific
16 time that I heard something?

17 MS. CHABER: Q. Yes.

18 A. I can't recall a specific time that I actually
19 heard something.

20 Q. You had testified that you believed that the
21 tobacco companies had said that it was safe to smoke. Do
22 you recall that testimony?

23 A. Yes.

24 Q. What was the source or the basis for your belief
25 that the tobacco companies had said it was safe to smoke?
00529

1 A. It must have been a media or -- or TV, or I read
2 it somewhere.

3 Q. Do you have knowledge of specific time periods of
4 remembering hearing this?

5 A. No specific time periods.

6 Q. Do you have a general knowledge about having heard
7 that, that the tobacco companies were saying it was safe to
8 smoke?

9 A. No, just that I must have read it or heard it
10 or -- heard it on the radio or TV, or read it somewhere. I
11 can't say when.

12 Q. And why did you believe the tobacco companies that
13 smoking cigarettes was safe?

14 MR. BARRON: Objection. Mischaracterizes the
15 testimony and lack of -- therefore, foundation and leading

16 and suggestive.

17 JUSTICE DOSSE: On foundation again, objection
18 sustained.

19 MS. CHABER: Q. You had a belief that the
20 tobacco companies had said it was safe to smoke, is that
21 correct?

22 A. Yes.

23 MR. BARRON: Objection. I couldn't get my
24 objection in. The question is leading and suggestive.

25 JUSTICE DOSSE: Objection. The overruled.

00530

1 MS. CHABER: Q. Is that correct, that you had a
2 belief?

3 A. Yes.

4 Q. What I am trying to understand is what formed your
5 belief that the tobacco companies had said it was safe?

6 MR. BARRON: Objection. Vague and ambiguous as to
7 the phrase "formed." It is repetitive. It is the same
8 question as source of belief, which was the earlier phrase
9 to which she answered.

10 JUSTICE DOSSE: Overruled.

11 You can answer the question.

12 THE WITNESS: I feel they manufactured cigarettes
13 so they -- they made them so they knew what they did to
14 people or didn't do to people, so I believed them.

15 MS. CHABER: I have nothing further.

16 JUSTICE DOSSE: Any further questions?

17 VIDEO OPERATOR: This is the end of the deposition
18 of --

19 MS. CHABER: No.

20 EXAMINATION BY MR. BARRON

21 MR. BARRON: Q. When answering your lawyer's
22 question just a moment ago about the source of your belief,
23 and when you stated it must have been the media, TV or read
24 it somewhere, do you know if you, in fact, actually ever
25 read anything anywhere as opposed to getting it through the

00531

1 media or TV?

2 A. Probably all of it. And I have even answered your
3 questions that I subscribed to the newspaper myself, and
4 occasionally watched news and listened to it.

5 Q. Can you point to any statement that you believe
6 you ever read in a newspaper, that in the newspaper was
7 stated or indicated that -- the statement was a statement
8 made by a tobacco company person?

9 A. Not in any particular instance that I can
10 remember.

11 Q. And except for the 1994 -- correction -- except
12 for the episode that we spoke about fairly extensively
13 concerning tobacco people on television and reports about
14 their comments concerning nicotine and whether it was
15 addictive or not, can you point to any statement ever made
16 on television which purportedly was a statement made by a
17 tobacco company person?

18 A. Not a particular one.

19 MR. BARRON: Thank you. I have no further
20 questions at this time.

21 JUSTICE DOSSE: Anything further by anyone? All
22 right. The questioning is ended.

23 VIDEO OPERATOR: This is the end of the deposition
24 of Leslie Whiteley. Total number of tapes used were eight.

25 All original videotapes will be held at Tooker &

00532

1 Antz, 818 Mission Street, fifth floor, San Francisco,
2 California 94103. 415-392-0650.
3 Going off the record. The time is 6:41.
4 (Whereupon the deposition was concluded
5 at 6:41 p.m.)

6

7 DATE

LESLIE WHITELEY

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